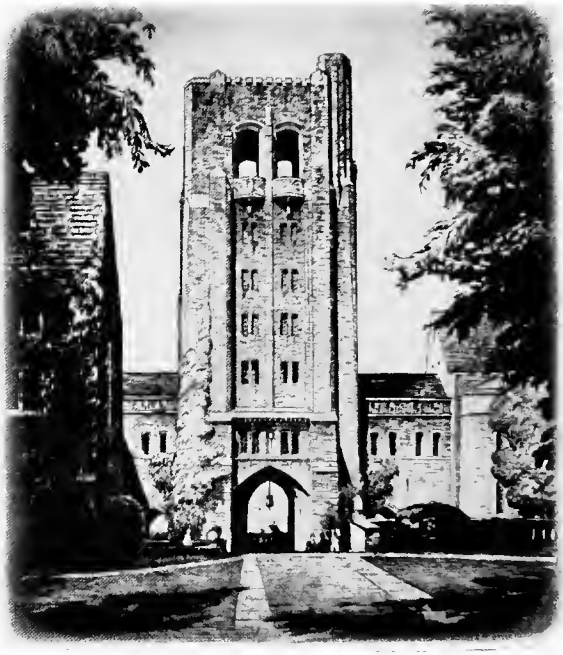

THE LAW

OF

JOINT-STOCK COMPANIES

AND

OTHER ASSOCIATIONS,

AS CONTAINED IN

THE STATUTES RELATING TO JOINT-STOCK COMPANIES, THE GENERAL ORDERS AND RULES OF THE COURT OF CHANCERY, AND DECISIONS OF THE COURTS OF LAW AND EQUITY;

TOGETHER WITH

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACTS, AND COUNTY COURT ORDERS THEREON,

THE STANNARIES ACT AND RULES,

AND

THE ACTS RELATING TO THE ABANDONMENT OF RAILWAYS AND WINDING-UP OF RAILWAY COMPANIES;

WITH

NOTES AS TO THE MODE OF PROCEDURE UNDER THEM.

BY

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SEVENTH EDITION,

BY

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PREFACE.

SINCE the last edition of this work was published, there have been some changes in, and many additions to, the law of Joint-Stock Companies. The Companies Act of 1862 had then only just become law, and there were no judicial decisions to throw light upon its construction, or explain its difficulties. Now, however, the case is far different, and there is a mass of decisions on every leading section, which are absolutely essential to the right understanding of the Act. Nor has the Legislature in the meantime been idle with regard to this subject. Another Companies Act, that of 1867, has been passed, which, however, seems to have had less practical effect on the law than was intended; and recent legislation has also produced an Industrial and Provident Societies Act, a Companies Seals Act, and enactments for facilitating the liquidation of Companies, for enabling certain Companies to issue Mortgage Debentures, and for the application of the Winding-up provisions of the Companies Acts to Railway Companies that have abandoned their undertakings. Such have been the additions made to the law of Joint-Stock Companies within the last few years; and it necessarily follows, that the present work, attempting, as it does, to give a complete statement of that law, in its various applications, is more than a new edition—it is a new book. The provisions which regulate the abandonment of Railways have been inserted, as proceedings must be taken under them before a Railway Company can be wound-up under the Companies Acts; and it has been thought right to add the Stannaries Act of 1869, which now regulates a most important class of associations—the mining partnerships of Devon and Cornwall.

The plan has been adopted of appending to each section of the Acts the decisions upon it, and also any dicta of the Judges throwing light upon its construction, and no efforts have been spared to make the arrangement of the notes as methodical and convenient for reference as possible.

In the Introductory Treatise a variety of instructions suggested by the experience of the author have been ventured on for the formation and practical working of a Joint-Stock Company. These were accounted a useful feature of the former editions, and, having been revised and corrected by the author, are retained in the present work.

For what is placed under the head of Winding-up, and for the notes under the sections of the various Acts, the Editor is responsible. It is hoped that the work will be found as concise as is compatible with a complete statement of the law on the subjects it embraces.

CHARLES J. O'MALLEY.

2, *Brick Court, Middle Temple,*
April, 1870.

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THE

Law and Practice

OF

JOINT-STOCK COMPANIES.

THE Law of Partnership prescribes that each partner shall be answerable for the debts and contracts of the other partners, made within the reasonable scope of the business of the partnership.

This law was founded upon the principle that he who acts through an agent ought to be responsible for his agent's acts; that it is politic as well as just that he who shares the profit of an enterprise should be subject also to its losses; that there is a moral obligation, which it is the duty of a civilised and Christian nation to enforce by law, to pay debts, perform contracts, and make reparation for wrongs.

Limited Liability is founded on the opposite principle, and is designed to enable a man to avail himself of the acts of his agent, if advantageous to him, and to avoid responsibility for them if they should be disadvantageous; to speculate for profits without being liable for losses; to make contracts, incur debts, and commit wrongs, the law depriving the creditor, the contractor, and the injured, of his rightful remedy against the property or the person of the wrongdoer, beyond the limit, however small, at which it may please him to determine his own liability. Thus it practically enables a trader to speculate for the chances of indefinite gain, without being liable for more than a definite loss.

DEFINITION OF LIMITED LIABILITY.

Limited liability, which has now been adopted into our commercial legislation, does not mean, as is commonly

supposed, the right to make with those with whom we deal a special contract that we shall not be liable beyond a named sum; such a contract was always within the power of persons dealing together; nor is it, as some imagine, a freedom, hitherto denied to partners, to make whatever conditions of partnership they please, as between themselves, for such power, also, has always existed.

But limited liability, as now established, is a privilege given by the law to seven or more partners to make terms of partnership among themselves that shall be binding upon all other persons; that is to say, it permits A., B., and five others, to agree together that they will not pay their debts, nor perform their contracts, nor repair any wrongs they may do, beyond a limit determined by themselves, and then, by public notice of that limitation, to make the agreement *inter se* binding on third persons. This result is effected by depriving the persons dealing with them of the right, which justice demands, and the laws of all civilised countries have hitherto recognised, to recover debts and enforce contracts, and by taking from the public the right to obtain redress for injuries done.

The righteousness of such a law needs not now to be discussed. Much difference of opinion upon it has prevailed; but the Legislature having decided upon its expediency and prescribed the manner of its adoption, the duty of the lawyer and the citizen is to give his best assistance towards accomplishing the object avowedly sought by the advocates of this law—the encouragement of *speculation*, by the offer of an unlimited chance of gain with only a limited risk of loss. That it has accomplished this design the commercial history of the period that has followed the passing of this act sufficiently proves. Whether it has been for the advantage of the country, morally or commercially, is another question, which every reader will readily answer.

Advantages of Limited Liability.

The advantages thus offered to speculators by limited liability are enormous. Probably few, even of those who have given some thought to the subject, are aware of the full extent of the boon conferred upon persons who speculate under its protection, as compared with persons not so privileged. So great is it, indeed, that it is difficult for individual traders, saddled with liability to pay their debts, perform their con-

tracts and make reparation for their wrongs, to compete with rivals who can trade to an unlimited extent without such liabilities.

The advantages to be enjoyed by reason of limited liability may be thus enumerated.

You are permitted to incur debts without limit, but to prescribe your own limit for payment of them. You may invest 20*l.*, and trade to the amount of 250,000*l.*; if you succeed, your profits will be enormous; if you fail, you can lose only your 20*l.*; the rest of the loss must fall upon your creditors. You are placed by this law in the advantageous position of a man who has everything to gain and nothing to lose. It is obvious wisdom, in any game of chance or skill, where the sum staked by you is limited, but the sum for which you play is unlimited, to play for the highest stake upon the table. Limited liability places you precisely in this desirable position. You cannot lose more than your 20*l.*, while it is open to you to speculate for 1000*l.*, or for 100,000*l.* The reason why prudent persons did not so speculate formerly was their consciousness that they must stake, not merely the 20*l.* they laid down, but also an amount equal at least to the sum played for. Released by the law from that liability, and your loss limited to your small stake, you have no longer need for caution, and not only may you *safely* speculate without limit, but, according to the well-known doctrine of chances, it will be the most *prudent* course for you to do so.

Again, it seems not to be generally understood that by limited liability you enjoy another privilege, greater even than that of speculating for unlimited profits with liability only for limited loss. As you are not liable for debts beyond your 20*l.*, so you are equally exempt from performance of inconvenient contracts. Hitherto, if you had made a contract of any kind, performance of it might have been enforced, however inconvenient to you. If, for instance, you had contracted to take a thousand quarters of wheat on a day named, at a price named; as the law *was* for partners, and *is* still for individuals, you were compelled to take the wheat on the day, even although it had then so fallen in price that you must lose 500*l.* by your bargain. The same obligation to abide by his bargain was imposed upon the seller. If the wheat had risen in price, still he was bound to deliver to you, though at a loss to himself of 500*l.* But, protected by limited liability, you are enabled to refuse to

perform your contract, if the price has fallen, while the person with whom you deal, not being equally privileged with yourself, will be compelled to perform his contract, if it should be for your advantage to enforce it. This privilege to enforce advantageous contracts, without being liable to perform disadvantageous contracts, gives to limited liability partnerships an incomparable superiority over individual traders, and will continue to do so until all are put upon an equal footing by the extension of the same great privilege to individuals as partners now enjoy.

It is the like with other liabilities to which individuals are now subject, but from which partnerships with limited liability are exempt. There is a large class of liabilities, known to the law as *wrongs*, which in the course of business are often done accidentally, but for which the law, nevertheless, makes the doer answerable in damages; such as a stage-coach killing a passenger, a ship running down another ship, undermining a house, and so forth. For none of these acts is a limited liability Company responsible beyond the amount of its shares subscribed, and if those shares are paid up, nothing, not even costs, can be recovered by the person wronged if an action be brought; but, practically, no person will bring an action against a Company from which he can recover nothing.

Many other special advantages and immunities flowing from the privilege of limited liability might be enumerated, but they will readily occur to every reader. These, however, will suffice to convey to persons unacquainted with this modern commercial principle and its application some conception of the extent to which it is capable of being enjoyed.

"The Companies Act, 1862."

This act is designed to consolidate the entire law of Joint-stock Companies, and to regulate their constitution, government, and winding-up.

No Company, association, or partnership consisting of more than *ten* persons, may be formed for the purposes of banking, or of more than *twenty* persons for the purpose of "carrying on any other business that has for its object the acquisition of gain," unless incorporated under this act: (sect. 4.)

Excepting only—

1. Companies formed under act of Parliament.

2. Companies constituted by letters patent.
3. Companies for working mines within the jurisdiction of the Stannaries.

These three classes of Companies may continue under their existing constitution; so that this act does not necessarily affect Railway Companies or partnerships on what is called the cost-book principle: (sect. 4.)

This act governs—

I. Companies previously existing.
II. Companies thereafter to be formed.

It will be more convenient to treat of each separately.

Its Operation on then existing Companies.

Sect. 181 thus defines an existing Company required to register under its provisions:—

181. For the purposes of this part of this act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company when registered with limited liability under this act shall be deemed to be a Company limited by shares.

And an Insurance Company is thus defined by sect. 3:—

3. For the purposes of this act a Company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance Company.

All existing Companies may be thus classified:—

I. Companies originally registered under the Joint-Stock Companies Registration Act (7 & 8 Vict. c. 110), and afterwards registered, but not formed, under "The Joint-Stock Companies Act of 1856."
II. Companies formed and registered under "The Limited Liability Act of 1855," and "The Joint-Stock Companies Act, 1856."
III. Banking Companies.
IV. Companies established by act of Parliament, letters patent, or royal charter.
V. Insurance Companies.

I. *Existing Companies registered but not formed under "The Joint-Stock Companies Act,* 1856."

The 177th section thus enacts :—

177. This act shall apply to Companies registered but not formed under the said Joint-Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint-Stock Companies Acts or any of them.

The reference in the above section is to sect. 180, which describes the existing Companies capable of being registered under this act.

180. With the above exceptions, and subject to the foregoing regulations, every Company existing at the time of the commencement of this act, including any Company registered under the said Joint-Stock Companies Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any act of Parliament other than this act, or of letters patent, or being a Company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound-up.

It is expressly provided that no Company in which the liability of all the members is already limited by act of Parliament or letters patent, shall register under this act as an unlimited Company, or as a Company limited by guarantee, and no Company is to register in pursuance of this act unless with the assent of a majority of its members at a general meeting summoned for the purpose, and if it is designed to register as a limited Company, such majority must be of not less than three-fourths of the members present, or voting by proxy: (sect. 179.)

If the Company purpose to register as a Company limited by guarantee, such assent must be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in case it should be wound-up, such sum as may be agreed upon: (sect. 179.)

The effect of this will be, that a Company in difficulties and contemplating a winding-up and its consequences in *un*-limited calls, may resolve to limit the liability of its members to a fraction only of that which might be claimed from them

in their former character, and so the members may evade their responsibility, notwithstanding the proviso that they shall remain liable for debts incurred before the change, and for the costs of a winding-up. The simple and ready mode of escape thus kindly provided for them will be to pay off the liabilities to which there is no limit with the moneys borrowed or goods obtained after the liability becomes limited.

II. *Companies formed and registered under "The Limited Liability Act of* 1855" *and "The Joint-Stock Companies Act,* 1856."

By sect. 176 this act is made to apply to such Companies, and in the same manner, in the case of a limited Company, as if it had been formed and registered under this act as a Company limited by shares, and in case of a Company not limited, as if it had been formed and registered as an unlimited Company under this act.

176. Subject as hereinafter mentioned, this act, with the exception of Table (A.) in the first schedule, shall apply to Companies formed and registered under the said Joint-Stock Companies Acts, or any of them, in the same manner in the case of a limited Company as if such Company had been formed and registered under this act as a Company limited by shares, and in the case of a Company other than a limited Company as if such Company had been formed and registered as an unlimited Company under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint-Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this act shall, in the case of any Company formed and registered under the said Joint-Stock Companies Acts or any of them, extend to altering any provisions contained in the table marked B. annexed to "The Joint-Stock Companies Act, 1856," and shall also in the case of an unlimited Company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the Memorandum of Association.

III. *Banking Companies.*

Existing Banking Companies may register with or without limited liability. But if *with* limited liability, at least *thirty* days before obtaining the certificate of registration a notice of the intention so to register must be given to every person and partnership firm having a banking account with the Company, either by delivery of the notice to such person

or firm, or by leaving it at his or its place of address, or addressing it by the post to such place of address. The consequence of failure to give such notice to its customers will be that the protection of limited liability as respects such customer will have no effect: (sect. 188.)

It is also enacted, by sect. 182, that no Banking Company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited Company.

IV. *Companies established by Act of Parliament, Letters Patent, or Royal Charter.*

Sect. 179 enacts—

1st. That no Company having the liability of its members limited by act of Parliament or letters patent, *and not being a Joint-stock Company as thereinafter defined,* shall register under the general provisions of the act, although it may do so merely for the purpose of being wound-up under the provisions of sect. 199 and following sections.

And the definition of a Joint-stock Company here referred to is found in sect. 181, and runs thus:—"A Joint-stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons."

2nd. No existing Company having the liability of its members limited by act of Parliament or by letters patent shall register under this act (except for the purpose of being wound-up), as an *unlimited* Company, or as a Company *limited by guarantee:* (sect. 197.)

This applies to Companies already having their liability limited by private act of Parliament or by letters patent, by which that liability is defined. But it will be observed that the restriction is not general; such a Company is prohibited only from registering under this act as an *unlimited* Company, or as a Company limited by guarantee. It is not

forbidden to register as a *limited* Company, nor is there any provision that the Company shall adopt the same limit of liability as is given to it by its act of Parliament or letters patent. There appears to be no obstacle to registration under this act with any limitation of liability the Company pleases, and thus defeating the provisions of its own constitution in that respect. Probably it was not designed that such a power should be given to Railway Companies, for instance; but we can find nothing that can be construed to restrain it.

3rd. No Company not a Joint-stock Company (as above defined) may register under this act as a Company *limited by shares:* (sect. 179.)

But may not such a Company register as a Company *limited by guarantee,* defined by sect. 9 to be "a Company formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound-up," a definition that does not necessarily imply that such a Company shall be formed by shares. On the contrary, it was probably designed for Companies not so formed, or rather for private partnerships, and it appears to us that any existing Company or partnership of seven or more partners may, notwithstanding the above prohibition to register as a Company limited by shares, register and obtain all the privileges and immunities of this act as a Company limited by guarantee.

V. *Insurance Companies.*

Hitherto Insurance Companies have been expressly excepted from the privilege of limited liability. That great immunity from obligation to repay the premiums they may receive is now extended to them, and it will be competent, not only for all future Insurance Companies to be formed with limited liability, but for all existing Insurance Companies to register themselves under this act and take to themselves the privilege of limiting their own liability.

But, unless it is intended to adopt limited liability or liability limited by guarantee, there is no need for an existing Insurance Company to register under this act, if it be a Company already registered under the former Joint-Stock Companies Acts, for sect. 176 enacts that this act "shall apply to Companies formed and registered under the said

Joint-Stock Companies Acts, or any of them, in the same manner in the case of a limited Company as if such Company had been formed and registered under this act as a Company limited by shares, and in the case of a Company other than a limited Company as if such Company had been formed and registered as an unlimited Company under this act."

What existing Companies may register.

The practical result of these provisions appears to be—

1st. That no existing Company formed by act of Parliament or letters patent, by which its liability is limited, *not being a Joint-stock Company*, can register under this act.

2nd. That an existing Joint-stock Company, although so formed, and having its liability so limited, *may* register under this act, though not as an unlimited Company, or as a Company limited by guarantee; but there appears to be no good reason why it should not register as a limited Company, setting its own limit of liability, without reference to the limit provided by its private act or letters patent.

3rd. An existing Company, not being a Joint-stock Company, *may* register as a Company limited by *shares*. But it is not prohibited from registering as a Company *limited by guarantee*, so that the object can be obtained quite as effectually.

4th. Existing Banking Companies may register with limited liability, or as a Company limited by guarantee.

5th. Existing Insurance Companies *must* register, and *may* do so with limited liability, or as a Company limited by guarantee.

Lastly, all existing Joint-stock Companies, that is to say, all Companies "having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons" (sect. 181) will henceforth come under the provisions of this act.

Except—

1. Companies formed by act of Parliament.
2. Companies formed by letters patent.

3. Companies engaged in mining within the jurisdiction of the Stannaries.

And any of these *may*, subject to the foregoing exceptions, and on the conditions above stated, and on compliance with the provisions subsequently set forth, register under this act, either as an unlimited Company, or a Company limited by shares, or as a Company limited by guarantee.

What is to be done by existing Companies for the Purpose of Registration.

The existing Joint-stock Companies who register under this act must, in the first place, deliver to the registrar the following documents:—

(1.) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(2.) A copy of any act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations, or other instrument constituting or regulating the Company:

(3.) If any such Joint-stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars; that is to say,

The nominal capital of the Company and the number of shares into which it is divided:

The number of shares taken and the amount paid on each share:

The name of the Company, with the addition of the word "limited" as the last word thereof:

With the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

And a Company not being a Joint-stock Company registering under this act must deliver to the registrar a list, showing the names, addresses, and occupations of the directors, or other managers of the Company; also a copy of any act of Parliament, letters patent, deed of settlement, contract of copartnery, cost-book regulations, or other instrument constituting or regulating the Company, with the addition, in the case of a Company to be limited by guarantee, of the resolution declaring the amount of guarantee: (sect. 184.)

If the whole or any part of the capital of such a Company has been converted into stock, there must be given to the registrar, instead of a statement of shares, a statement of the amount of stock, and the names of the persons who were holders of it, on some day to be then named, not being more than six clear days before the day of registration: (sect. 185.)

And all these documents are to be verified by a declaration of the directors, or any two of them, or any two other principal officers of the Company: (sect. 186.)

The registrar may require evidence to satisfy himself if the Company seeking registration is a Joint-stock Company: (sect. 187.)

No fees are to be charged for such registration by an existing Company unless it changes its character, and, having been before unlimited, registers as a limited Company or otherwise: (sect. 189.)

If it is desired to register with limited liability, the Company is empowered to change its name for that purpose by the addition of the word "limited" to that name: (sect. 189.)

On these conditions being complied with, the Company is to have a certificate of registration under this act, which is to be conclusive evidence that all has been rightly done, the requisitions for registration complied with, and that the Company is authorised to be so registered as a limited or unlimited Company, as the case may be, and the date of incorporation mentioned in the certificate is to be deemed the date at which the Company was incorporated under this act: (sects. 191, 192.)

The property of the Company, real and personal, including obligations and things in action belonging to or vested in the Company at the date of its registration under this act are to be thereby transferred to the new incorporation for all the estate and interest of the Company therein (sect. 192) But it is expressly provided, by sect. 94, that registration under this act is not to affect obligations, debts, or contracts previously incurred; all pending actions, suits and legal proceedings commenced against the Company, or the public officer, or any member thereof, may be continued as before and as if this registration had not taken place. But there is this important further provision, that, after registration execution is not to issue against any individual member of the Company for judgment previously obtained against the

Company; but if there is no property of the Company that can be taken sufficient to satisfy such judgment, an order is to be had for winding it up: (sect. 195.)

When a Company is so registered, all the provisions contained in any act of Parliament, deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument constituting or regulating the Company, are to be deemed to be its conditions and regulations, in the same manner and with the same incidents as if they were contained in a registered Memorandum and Articles of Association, and all the provisions of this act are to apply to the Company, its members and contributories, and all dealing with it, in the same manner in all respects as if it had been formed under this act, subject to the following provisions: (sect. 196.)

(1.) That Table (A.) in the first schedule to this act shall not, unless adopted by special resolution, apply to any Company registered under this act in pursuance of this part thereof:

(2.) That the provisions of this act relating to the numbering of shares shall not apply to any Joint-stock Company whose shares are not numbered:

(3.) That no Company shall have power to alter any provision contained in any act of Parliament relating to the Company:

(4.) That no Company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the Company:

(5.) That in the event of the Company being wound-up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:

(6.) That nothing herein contained shall authorise any Company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument constituting or regulating the Company, as

would, if such Company had originally been formed under this act, have been contained in the Memorandum of Association, and are not authorised to be altered by this act.

But these provisions are not to derogate from any power of altering its constitution or regulations which may be vested in such Company by virtue of the act of Parliament deed of settlement, or other instrument constituting and regulating it: (sect. 196.)

But no existing Company, not *required* by the act to register under this provision, is to do so without the assent of a majority of such of its members as may be personally or by proxy present at a general meeting called for the purpose.

And if a Company, not having the liability of its members limited by acts of Parliament or letters patent, is about to register as a limited Company, that majority must consist of not less than *three-fourths* of the members present personally or by proxy: (sect. 179.)

And if it is intended to register as a Company limited by guarantee, such assent is to be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company, contracted before the time at which he ceased to be a member, and for the costs and expenses of winding-up the Company, such amount as may be required not exceeding a specified amount: (sect. 179.)

What new Companies may be formed under the new Law.

The Act of 1856 introduced another novelty into the law of Joint-stock Companies.

Formerly the law was limited to associations for the purposes of profit; in fact to persons engaged in manufactures or commerce. The Joint-Stock Companies Registration Act and the Limited Liability Act were expressly restricted to Companies formed for a commercial purpose or a purpose of profit.

By the Act of 1856, any seven persons, *associated for any lawful purpose*, were empowered to form themselves into an incorporated Company, and obtain the privilege of limited liability.

All associations of seven or more persons, whatever their

object, commercial, political, religious, or philanthropic, provided only it be a lawful object, can now become a corporation and secure the great privileges and immunities granted by the law.

All partnerships of more than twenty persons, carrying on any trade or business having gain for its object must be registered as a Company under this act, unless authorised by act of Parliament, by royal charter, or by letters patent, or unless engaged in working mines within the jurisdiction of the Stannaries.

And *all* associations of seven or more persons for any lawful purpose whatever *may* be so registered.

But although the law nominally applies only to partnerships of seven or more persons, it is fortunately capable of being extended to a very much larger circle, thus preventing the ruin it threatens to individual traders, if no means could be devised for making them participators in its privileges. Happily, an easy plan presents itself for accomplishing this. We will endeavour to show

How an Individual Trader may avail himself of Limited Liability.

It is justly complained of the existing law of limited liability, that it gives to seven persons trading together a privilege which it denies to individual traders; and that it will be difficult, if not impossible, for individuals liable to pay their debts and perform their contracts to compete on even terms with rivals released from the liability to pay the one or perform the other. This is so manifest that it is important to see if any plan can be devised by which *individual* traders might obtain for themselves the privilege of limited liability. The following has been found sufficient for the purpose.

The plan is based upon the peculiar feature of the new law, which does not require any certain number or amount of shares, nor the subscription of any number of the shares, nor of any portion of the capital, as a preliminary to incorporation and the commencement of business.

Bearing in mind this state of the law, let it be supposed that a trader, say, a draper or a grocer, desires to secure the privilege of limited liability, and so to fight on even terms with his seven associated rivals having the privilege to trade without responsibility for their debts and contracts. He

can do so, in effect, thus:—Let him convert his business into a limited liability Company, with so much capital as he is willing to stake, say 1000*l.*, in 1000 shares of 1*l.* each. As the Company must consist of seven persons at the least, he has but to give one share of 1*l.* to each of his children (if of age), brothers or sisters, parents or servants, and keep the remaining 994 shares himself, and so he will obtain the advantages of incorporation, and the privilege of not being liable for any of his debts or contracts beyond the 994*l.*, or whatever the sum might be at which he has fixed his own liability; and if this is paid up, or registered as paid, he has no liability at all.

It is not even necessary that he should take up all the remaining shares. If he desires further to restrict his liability, he has only to take a portion of them.

In like manner, traders in difficulties will easily save themselves from the personal inconvenience of bankruptcy or insolvency, by immediately converting their business into limited liability Companies; for thus they escape personal responsibility, and their new creditors will have no remedy but against the assets of *the business*—the other property they possess will not be liable.

A man may be worth half a million, and commence a business with limited liability, and the creditors of that business will have no remedy against *him* or his other property, but only against the assets of the particular business, which may be *nil*.

And if individual traders may thus easily avail themselves of the privilege of limited liability to avoid the payment of their debts and performance of their contracts, so may ordinary partnerships do the like in the like manner. If it is a great boon to a man trading alone, it is a still greater boon to men trading together, because the law will thus protect them, not merely against the consequences of their own acts, but against the consequences of the acts of one another. The process is equally simple, and performed precisely in the same manner.

How a Partnership may avail itself of the Privilege of Limited Liability.

Convert the partnership into a Company. If there be fewer than seven partners, name a capital, according to convenience or fancy, for there is no need that it should be paid

or even subscribed; divide it into a number of small shares; give one share to each of so many relatives or dependents as may be required to make the seven, on whom the act confers incorporation; let the existing partners divide among the members the rest of the shares, or any part of them, in the same proportion as their present interest in the concern. Then they will become an incorporated Company, of right, without any further liability whatever (for the amount of the shares they hold will be paid up), and whatever befalls the business, *they* are personally secured; *they* can lose nothing; *their* private property is safe; *they* are exempt from bankruptcy. If the business prospers, they will pocket all its profits; if it should fail, the loss will fall not upon them, but upon their creditors.

With the advantages given by this law, there is no reason why any trader should become bankrupt, seeing that it is in his power so easily to protect himself against that contingency by converting his business into a limited liability Company, in the manner above described.

Another feature of this law is the omission of any requirement for the filing of the balance-sheet with the registrar, or for access to it, by the creditors or the public. Formerly this was enforced. Now, the state of the affairs of the Company may be effectually concealed, and the advantage of this to individuals constituting themselves a corporation is obvious.

The following is a list of some of the applications of the new law: its immunities and privileges may be secured by

Individual Traders.
Trading Partnerships with any number of Partners.
Banks.
Insurance Companies.
Religious Societies.
Literary Societies.
Benevolent Institutions.
Freehold Land Societies.
Political Societies.
Clubs.
Social Societies.

So numerous and various being the Companies and associations which may be incorporated under the new law, it may be convenient to state generally what should be the scheme for getting up a trading Company before we proceed to describe how it should be formed.

The Scheme of a Company.

There is now no necessity for any capital whatever to be paid up. A Company may begin business with 10*l*. If it prospers and pays, the speculators reap the gain; if it fails, the promoters, having nothing to lose and being subject to no inconvenience whatever, leave the loss to their creditors. But, although it is not necessary that any portion of the capital shall be actually paid, it will be the most prudent course to require the full amount of the share to be paid up as soon as possible after business has begun. There is an obvious reason for this. Until the whole share is paid up, a liability remains for the portion unpaid, which will subject the shareholder to the claims of creditors to the extent of that balance, and probably to considerable costs also; for the statute expressly enacts that the shareholder is to be liable for the costs of proceedings taken to recover any balance due on his shares. If, therefore, a shareholder has paid up only ten shillings in the pound, and a creditor obtains judgment, and then comes upon the shareholder, as he could and would do, for the unpaid balance of his share, he might recover, not only the sum due on the shares, but also all the costs of the process. Perfect immunity can, indeed, be obtained only by paying up the full amount of the share, and this will leave the directors free to speculate to any extent, with absolute security to their shareholders, and thus to promote most effectually the interest of the shareholders, which has been shown to consist in staking their limited risk of loss against an unlimited chance of gain, without the caution requisite in trading, where the risks both of gain and loss are equal. It is the peculiar advantage of limited liability that it exempts those who enjoy its privileges from the caution to which individual traders are compelled whose liability is without limit. Bold speculation is the *wisest* course in such a case, and therefore whatever permits the directors to speculate freely, with no consequences to fear, is the most prudent plan to be adopted in the formation of a limited Company. Nothing can be more conducive to this than *paid-up* shares discharging the shareholders from all further liability. Even if the entire of the money be not required, it should be all paid; and there are divers ways in which it may be sent back again, if not wanted for the business, as in dividends, bonuses, purchases of property, and so forth.

Under this law, this plan of paid-up shares is rendered perfectly practicable in all cases by the removal of the restriction which gave limited liability only to shares of not less than 10*l.* The shares in a limited Company may be of any amount, however small, and it would be prudent to make them *very* small, in order that they may be paid up without inconvenience.

It is also important to bear in mind, when drawing up the scheme of a Company with limited liability, that it is no longer necessary for any fixed number of shares to be subscribed before it can be incorporated. According to the old law, a considerable portion of the shares were required to be subscribed before a certificate of complete registration could be obtained. It is not so now. One share of five shillings, or less, taken by each of the *seven* promoters will be sufficient, whatever the *nominal* amount of the capital. Hence no caution is now needed, in drawing the scheme of a Company, for limitation of the capital to be announced. It may be as well appointed at 100,000*l.* as at 1000*l.*; for even if no more than the seven shares should ever be taken, the Company will enjoy the credit of the 100,000*l.*, which is its *intended* capital. A large capital looks better in advertisements, and inspires greater confidence. The surplus shares can remain to be taken up at any time thereafter, if the speculation succeeds, and if it should fail, no harm can possibly come of it to those who are already shareholders.

It is also necessary to premise that all the preliminary proceedings formerly required to be taken are now swept away. Provisional registration is abolished, and with it all the prohibitions against announcing the prospectus of a projected Company until it is registered. The present law takes no cognisance whatever of a Company until it is brought to the registrar to receive the certificate of incorporation. You may do anything with it you please as a preliminary process. The plan may be made public, and shareholders invited, in any manner and on any terms, and it is not until the Memorandum of Association is signed that anything is to be done in pursuance of the statute.

Bearing in mind this great change in the law, and its consequences as affecting the manner of getting up a Company, we will now offer such hints as experience has suggested for the most efficient performance of this important stage in the career of a Joint-stock Company; for in this, as in many other affairs, the ultimate success often depends upon the

prudence with which the first step is taken. Perhaps, therefore, the reader may be not unwilling to receive some practical hints—

How to get up a Company.

Formerly, the first step was to give a title to your Company, define its object, register it provisionally, and then and not before, to publish the prospectus of it.

But now the better course will be to form your Company first, and then to bring it before the public. For the formation of a Company, nothing more is necessary than for *seven* persons to subscribe a Memorandum of Association stating the title, objects, locality, amount of proposed capital and the number of shares into which it is to be divided, and consenting each to take one share. Forthwith—without subscription of the capital, with no more than the seven shares subscribed, and without one farthing paid up—the scheme will be absolutely entitled to be incorporated with all the privileges and personal immunities of a corporation.

Hence the most prudent course will be to *form* the Company *before* you publish it.

Constitution of a Company.

Any *seven* or more persons may form an incorporate Company. This they may do on *either* of the following plans:—

I. With a capital divided into shares of a fixed amount with *liability limited* to the amount, if any, unpaid on the shares.

II. Without a specified capital or shares, and the liability limited to such amount as the members may respectively undertake to contribute to the assets of the Company, in case of its being wound-up, called by the act, *a Company limited by guarantee.*

III. With a capital divided into shares of a fixed amount *without limitation of liability.*

It will be necessary to determine at the outset which of these plans shall be adopted, for the Memorandum of Association must be framed accordingly.

The first consideration will be, whether the Company

shall be constituted by way of *shares* or by way of *guarantee.*

A Joint-stock Company by *shares* is too well known to need elaborate description. It is formed by a definite and declared capital, divided into shares of a definite and declared amount, which shares are transferable by any holder without the consent of the other partners.

This is the only form of a trading Company hitherto known to the law. But the present act has introduced a new one, of more than questionable propriety, as opening a wide field for fraud, to which it has given the name of "a Company limited by *guarantee.*" Being a perfect novelty in our commercial legislation, it will be convenient to attempt a short explanation of its meaning.

A Company formed of shares states, in the Memorandum of Association, the amount of the proposed capital and the number and value of the shares. But a Company formed by guarantee states nothing of its capital, actual or proposed, but only that the persons forming it agree to hold themselves liable to contribute to the assets of the Company, in the event of its being wound-up, a specified amount and no more.

The practical effect, and probably the design, of this provision, is to enable wealthy persons to speculate in trade, pocketing the profits, if the business succeeds, and avoiding the losses, if it fails. It is an ingenious contrivance for the further encouragement of roguery, by indefinite extension of the too large protection it enjoys already.

Thus, if B. desires to speculate without risk of loss, he needs but to form a Company "limited by guarantee," composed of himself, children, clerks or servants, to the number of seven, each of whom subscribes the Memorandum of Association, declaring himself liable to the amount of 1*l.* if the Company be wound-up. B. begins the business, which is thus, in fact, his own; if it prospers, he pockets the gain; if it fails, as soon as he has withdrawn as much of his capital as he can convert, he causes it to be wound-up, and all that he is then liable to pay, even though thousands of pounds may be due to creditors, is the *seven* pounds he and his satellites have engaged by the Memorandum of Association to contribute towards the winding-up of his own business.

Many other similar uses, or abuses, to which this novelty in English law is capable of being applied will present themselves at a glance to the experienced reader.

Nevertheless, it *is* the law, and, being such, it will be open to any person to avail himself of it without reproach.

Formation of a Company.

Having determined on which of the four classes the Company shall be constituted, the next proceeding is to draw up the *Memorandum of Association.*

The form of this document varies with each of the four varieties in the constitution of a Company; as it is to be limited by shares, or limited by guarantee, or unlimited. They are as follow:—

FORM A.

Memorandum of Association of a Company limited by Shares.

1st. The name of the Company is "The Eastern Steam Packet Company Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are, "the conveyance of passengers and goods in ships or boats between such places as the Company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the Company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones, of , in the county of , merchant.	200
2. John Smith, of , in the county of	25
3. Thomas Green, of , in the county of	30
4. John Thompson, of , in the county of	40
5. Caleb White, of , in the county of	15
6. Andrew Brown, of , in the county of	5
7. Cæsar White, of , in the county of	10
Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A.B.

No. 13, Hute-street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM of ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the Company is "The Mutual London Marine Association Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , merchant.
2. John Smith, of , in the county of
3. Thomas Green, of , in the county of
4. John Thompson, of , in the county of
5. Caleb White, of , in the county of
6. Andrew Brown, of , in the county of
7. Cæsar White, of , in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A.B.,
No. 13, Hute-street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM of ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the Company is "The Highland Hotel Company Limited."

2nd. The registered office of the Company will be situate in Scotland.

3rd. The objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers,

and the doing all such other things as are incidental or conducive to th attainment of the above object."

4th. Every member of the Company undertakes to contribute to th assets of the Company in the event of the same being wound-up durin the time that he is a member, or within one year afterwards, for pay ment of the debts and liabilities of the Company contracted before th time at which he ceases to be a member, and the costs, charges, an expenses of winding-up the same, and for the adjustment of the rights o the contributories amongst themselves, such amount as may be require not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, ar desirous of being formed into a Company, in pursuance of thi Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

(*See above form.*)

FORM D.

MEMORANDUM of ASSOCIATION of an Unlimited Company, having a Capita divided into Shares.

Memorandum of Association.

1st. The name of the Company is "The Patent Stereotype Com pany."

2nd. The registered office of the Company will be situate in England

3rd. The objects for which the Company is established are "th working of a patent method of founding and casting stereotype plates, c which method John Smith of London is the sole patentee."

We, the several persons whose names are subscribed, are desirous c being formed into a Company, in pursuance of this Memorandum c Association.

Names, Addresses, and Descriptions of Subscribers.

(*See above form.*)

This document must be signed by *seven*, at least, of th shareholders or partners, and the signature of each must b attested by a witness.

Although the schedule sets forth a form to be adopted, i may be "as near thereto as circumstances admit." It is t contain the following particulars :—

1. The *name* of the proposed Company.

It was decided in *Reg.* v. *Whitmarsh* (1 Q. B. 803), that Company cannot be registered by the title of "corporation, and that decision does not appear to be affected by this ac

But there is no objection to calling it "society" or association," or any similar term. If it is intended to enjoy the privilege of limited liability, the word "Limited" must be a part of the title. It should not be a mere addition, introduced parenthetically, but should form a portion of the name, written and printed in the same letters; as thus, "*The Grocery Company Limited.*"

The act forbids the adoption by any Company of "a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive: except where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the registrar may require." If, by inadvertence, such a name should be registered, the Company, with the consent of the registrar, may change its name, and the new name may be registered in the place of the former name: (sect. 20.)

2. It must state "the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is to be established."

At this stage, therefore, it is not necessary to determine more as to the locality of the Company than in which of the three kingdoms it is to be established. The actual site of the chief office need not be appointed until the Company proceeds to business.

3. It must state "the objects for which the proposed Company is to be established."

This will require some deliberation, and much care in the definition; for the Company will be incorporated for the purposes only that are stated in the Memorandum of Association. To those objects it will be strictly limited. To pursue any other objects than these will be illegal, and the managers certainly, and probably the Company, would lose all the protection of the act in respect of any transactions not properly within the purposes for which the Company is incorporated.

4. It must state whether the liability is to be limited or unlimited.

So great are the advantages of limited liability, that there can be no hesitation in preferring it. No Company is now formed upon any other principle.

5. It must state the amount of the nominal capital of the proposed Company.

Observe, that it is the *nominal* capital only that is to be stated; that is to say, the capital which the promoters may consider as likely to be most attractive. As the act does not require any portion of that capital to be paid, and only seven shares to be taken in it, there is no reason for limiting its amount. It is as easy, and as lawful, to fix it at a million as at ten thousand pounds, and the larger the sum the more imposing the appearance of the Company in prospectuses and advertisements, and the more readily will it obtain credit and confidence. No possible evil or inconvenience can arise from appointing the *nominal* capital at a good round sum; for the liability is not, as is commonly supposed, limited to the nominal capital, but to the shares held by each shareholder. For instance: if a Company is formed with a nominal capital of 100,000*l.*, in 100,000 shares of 1*l.* each, the liability does not extend to 100,000*l.*, but only to so many 1*l.* shares as may be subscribed; and as only seven of these are *necessary* to the formation and incorporation of the Company, it results that a Company may announce a nominal capital of 100,000*l.* while having only 7*l.* actually subscribed and paid, and its liability will be limited to 7*l.*

This peculiarity of the new law should be borne in mind when forming a limited liability Company, for it affords a facility for beginning business without waiting for capital that was impracticable under the old law, which required a certain portion of the capital to be subscribed and paid before the Company could be formed.

6. It must state, also, "the number of shares into which such capital is to be divided, and the amount of each share."

The new law does not prescribe any limit of division of shares. Formerly the shares could not be less than 10*l.*; now, they may be of any amount the promoters please. There are obvious advantages in making them of small amount. Foremost of these is the complete exemption from future liability, which may be thus secured. If the full amount of the shares be paid up, the shareholder becomes absolutely freed from any further claim or liability of any kind. He needs not to trouble himself again about the proceedings of the Company. He can allow the managers to speculate to any extent, inasmuch as he will share the

profits of success without being liable for any of the loss attendant upon failure.

If you are a trader desirous of availing yourself of the privilege of limited liability, in the manner already described, it will be important for you to appoint the shares at a small sum, for the purpose of keeping the business substantially in your own hands. Shares of five or ten shillings would suffice in such case. But for a Joint-stock Company on a large scale it would not be prudent to appoint the shares at less than 5*l.*, because the cost of working the machine is so great.

It is presumed that the seven persons who sign the Memorandum of Association must be of full age, and not under incapacity to contract; they must not be children under twenty-one, nor married women, nor lunatics. Each must take one share at least, and the number of shares taken by each must be set against his name in the Memorandum of Association.

The Memorandum of Association may or may not have Articles of Association annexed thereto or endorsed thereon. When forming the Company, it will be necessary to determine what shall be done as to this.

A table appended to the act (B.) presents a series of regulations for the government of a Company. But these are not compulsory. It is enacted only, that if no other regulations are provided by the Articles of Association, and so far as the regulations in the table are not altered or repealed by the Articles of Association, they shall be taken to be the regulations of the Company: (sects. 9, 10.)

Hence, either of the following courses may be adopted:—

1st. You may be content with the Memorandum of Association alone, in which case the regulations in the table will be the regulations of the Company. Or,

2nd. You may annex to the Memorandum of Association such *Articles of Association* as you may desire, in which case the articles and such of the regulations in the table as are not repealed or altered by them, or are not inconsistent with them, will form together the regulations of the Company. Or,

3rd. You may annex to the Memorandum of Association Articles of Association embodying all such of the regulations in Table (B.) as you do not desire to repeal or alter, adding such others as you may require, and thus the Company will

possess a code of regulations complete in itself, without having to refer from the Articles of Association to the table to determine how they are affected by the regulations of Table (B.) and *vice versâ*.

We would strongly recommend that this latter course be pursued in the formation of a Company. It will require some care, and the assistance of a lawyer should be engaged for the doing of it. But no deed of settlement will now be necessary.

A lawyer, who is a man of experience in the business of the world, whether solicitor or counsel, will be the best adviser in the preparation of Articles of Association, for they are to form the code by which the Company is to be governed.

It should be observed, also, that none of the restrictions of the old law with respect to the nature of the regulations are preserved in the present law. The promoters may make any regulations or any terms they please by the Articles of Association, and these will be absolutely binding upon the Company. They may put any price upon their own commodities, secure for themselves any amount of salary, make themselves managers, or fill their own pockets as full as they please without the slightest restraint. The professed principle of the present law is absolute liberty for speculators, debtors, and swindlers.

Forms of Articles of Association to be used where the regulations of Table (B.) are intended to be adopted as the code of the Company are given in the schedule to the act; but we repeat our recommendation to frame a complete series of regulations, adapted to the requirements of the particular Company, expressly to *exclude* the table. The following is the form given by the act:—

ARTICLES of ASSOCIATION *to accompany* MEMORANDUM of ASSOCIATION *of a Company limited by Guarantee and not having a Capital divided into Shares.*

1. The Company, for the purpose of registration, is declared to consist of five hundred members.
2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place as the directors may determine.
5. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
6. The above-mentioned general meetings shall be called ordinary meetings; and all other general meetings shall be called extraordinary.
7. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.
8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.
9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.
12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.
13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.
14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.
16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

19. Every member shall have one vote and no more.
20. If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.
21. No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.
22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or if such appointer is a corporation, under its common seal.
23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.
24. Any instrument appointing a proxy shall be in the following form:

Company Limited.

I , of , in the county of , being a member of the Company Limited, hereby appoint of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or*, at any meeting of the Company that may be held in the year].

As witness my hand, this day of .

Signed by the said , in the presence of .

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.
26. Until directors are appointed, the subscribers of the Memorandum of Association shall for all the purposes of this act be deemed to be directors.

Powers of Directors.

27. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the Company in general meeting.

Business of Company.

[*Here insert Rules as to mode in which business of Insurance is to be conducted.*]

Accounts.

29. The accounts of the Company shall be audited by a committee of five members, to be called the audit committee.
30. The first audit committee shall be nominated by the directors out of the body of members.
31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.
32. The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.
33. The audit committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company: they may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the Company.
34. The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the Company, and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the Company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered

in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post-office.

Winding-up.

37. The Company shall be wound-up voluntarily whenever an extraordinary resolution, defined by "The Companies Act, 1862," is passed requiring the Company to be wound-up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , merchant.
2. John Smith, of , in the county of
3. Thomas Green, of , in the county of
4. John Thompson, of , in the county of
5. Caleb White, of , in the county of
6. Andrew Brown, of , in the county of
7. Cæsar White, of , in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A.B.,
No. 13, Hute-street, Clerkenwell, Middlesex.

ARTICLES *of* ASSOCIATION *to accompany* MEMORANDUM *of* ASSOCIATION *of a Company limited by Guarantee, and having a Capital divided into Shares.*

1. The capital of the Compaay shall consist of five hundred thousand pounds, divided into five thousand shares, of one hundred pounds each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones, of , in the county of	200
2. John Smith, of , in the county of	25
3. Thomas Green, of , in the county of	30
4. John Thompson, of , in the county of	40
5. Caleb White, of , in the county of...	15
6. Andrew Brown, of , in the county of	5
7. Cæsar White, of , in the county of	10
Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A.B.,
No. 13, Hute-street, Clerkenwell, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is two thousand pounds, divided into twenty shares of one hundred pounds each.

[Names, Addresses, and Descriptions of Subscribers, with the number of Shares taken, &c., as in the above form.]

The *regulations* by which the Company is to be governed, if not repealed or altered by the Articles of Association, will be given in a subsequent part of this treatise, when we come to treat of the management of a Company.

The Memorandum of Association and the Articles of Association (if any) are to be signed by *seven* shareholders at least, and the execution of each subscriber attested by one witness.

Both documents must be stamped "as if they were deeds," that is to say, each must have a thirty-five shilling stamp for the first thirty folios, and a follower for every additional fifteen folios: (sect. 11.)

Being signed, the Memorandum of Association, with the Articles of Association annexed, must be taken to the registrar, who is then to certify, under his hand, that the Company is incorporated.

The fees to be paid to the registrar for registration are thus prescribed by the act:

TABLE B.

TABLE *of* FEES *to be paid to the* REGISTRAR *of* JOINT-STOCK COMPANIES *by a Company having a capital divided into shares.*

	£	s.	d.
For registration of a Company whose nominal capital does not exceed 2000*l.*, a fee of	2	0	0
For registration of a Company whose nominal capital exceeds 2000*l.*, the above fee of 2*l.*, with the following additional fees regulated according to the amount of nominal capital; (that is to say,)			
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 2000*l.*, up to 5000*l.*	1	0	0
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 5000*l.*, up to 100,000*l.*	0	5	0
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 100,000*l.*	0	1	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 1000*l.*, or part of 1000*l.*, as would have been payable if			

	£	s.
such increased capital had formed part of the original capital at the time of registration.		
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.		
For registration of any existing Company, except such Companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new Company.		
For registering any document hereby required or authorised to be registered, other than the Memorandum of Association.	0	5
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ...	0	5

Table C.

Table *of* Fees *to be paid to the* Registrar of Joint-Stock Company *by a Company not having a capital divided into shares.*

	£	s.
For registration of a Company whose number of members as stated in the Articles of Association does not exceed 20 ...	2	0
For registration of a Company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100	5	0
For registration of a Company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.		
For registration of a Company, in which the number of members is stated in the Articles of Association to be unlimited, a fee of	20	0
For registration of any increase on the number of members made after the registration of the Company in respect of every 50 members, or less than 50 members, of such increase	0	5
Provided that no one Company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the Company.		
For registration of any existing Company, except such Companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new Company.		
For registering any document hereby required or authorised to be registered, other than the Memorandum of Association	0	5
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ...	0	5

The effect of registration is thus declared by the act: (sect. 13)—

The Company becomes a body corporate by the name prescribed in the Memorandum of Association.

It has a perpetual succession and a common seal.

It has power to hold lands.

The date of the certificate is to be deemed the date of incorporation.

The Prospectus.

Being now a Company, or corporation, vested with great powers, exempted from all legal liabilities, practically irresponsible for its acts and defaults, it will be the most convenient course to issue the prospectus and canvas for support. For this purpose the first care will be to *prepare the prospectus.*

This is a very important matter, for success or failure will often depend upon the judgment and tact with which the prospectus is drawn. A few practical hints as to this may be acceptable.

In the first place, provide your officers; make your appearance before the world with good names, as a guarantee for respectability—an assurance to the public that there is reality in the project, and that sensible men think well of it. Let directors and secretary be secured before you ask the support of shareholders. In the choice of directors, prefer men who are known to be prudent, and who have proved their capacity in the management of their own affairs, to merely *great* names.

State *the objects* of the proposed Company shortly, simply, and clearly.

Then set forth, with equal clearness, but not necessarily with equal brevity, the facts and figures upon which you base your calculations of profit. Mere assertion will not do. Remember that you will have many competitors for the patronage of those who have money to invest. A thousand schemes invite them on every side, and the very numbers will make them more careful in investigating the claims of each. In your calculations, estimate every item as much against yourself as possible. Conceal no difficulties nor objections, but state them and answer them.

An important rule to be observed in framing a p is, not to make it *too long*. Persons will not trouble to read very long papers, and, if they re they do not understand them. Use as few word sible. Make your sentences as short as possible. the prospectus into many paragraphs, separati by a marked space, so that the eye may read them. Many a bad scheme has been made to by a clever prospectus, and many a good one has reason of a bad prospectus. More depends upon upon almost any other particular in the getting Company, and therefore it is that we say so much We therefore present a specimen of one, which, i understood, is entirely imaginary.

PROSPECTUS OF THE CLOTHING COMPAN LIMITED.

CAPITAL, 20,000*l.*, IN 20,000 SHARES OF 1*l.* EACH.

Provisional Directors.

JOHN SMITH, Esq., Clapham. | EDWARD JONES, Esq., F
WILLIAM ROBINSON, Esq., Hart-st. | SAMUEL BROWN, Esq., W

Secretary—JAMES THOMAS.

Bankers—The Holborn Banking Company.

Office—21, Charles-street.

This Company is formed to carry on the business of clothi departments.

The profits of this business are known to be at least 30 pe

But it is certain that these may be largely increased by bett ment, more cautious credit, offering advantages to ready-money and concentration of management.

According to the present system those who pay ready mo fact, for the long credits and bad debts of other customers.

The plan of the Clothing Company will be to establish scales of charges—for long credit, short credit and ready mo it to their customers to adopt which they please. Those wh money will have all the advantage of low prices to whi entitled. If a bill is delivered, it will be made out at the hig credit charge, but with notice to the customer upon the bill th within so many months such a sum will be accepted in ful arrangement justice will be done to every class of customers.

Establishments will be opened by the Company in differe the metropolis, and in the largest provincial towns.

Systematic means will be adopted to prevent credit being given to doubtful customers.

Security will be required from all the servants of the Company.

It is calculated that the shareholders may anticipate a return of from 20 to 30 per cent. upon the capital, the amount of their profits depending much upon their own exertions to increase the business of the Company.

Applications for shares in the following form to be addressed to the Secretary at the Office of the Company, 21, Charles-street.

To the Directors of the Clothing Company Limited.

Be PLEASED to allot to me shares in the Clothing Company Limited

DATED the day of , 1856.

Signed A.B.
of

The above short form of a prospectus will serve for a sort of model, to be varied according to the subject-matter. We have written it without reference to any particular scheme, but perhaps the suggestion there made of three scales of prices, giving to ready money the advantage to which it is entitled, would be very likely to succeed, and might be extensively adopted, not only by Companies, but by individual traders.

The prospectus having been advertised and circulated, and applications for shares being received, you will proceed to allot them, according to your estimate of the applicant's worth. But there is not the same necessity now, as formerly, to ascertain the solvency of the proposed shareholder, for he is liable only for the amount of his shares, and the creditors of the Company can obtain no more from the richest than from the poorest shareholder. Formerly it was desirable to have the most responsible and respectable shareholders you could obtain. That precaution is no longer necessary, and hence no inquiries need be made, and references may now be dispensed with.

The form of *allotment of shares* may be as follows:—

The Clothing Company Limited.

Office, 21, Charles-street, 1st Aug. 1856.

SIR,—The directors have allotted to you five shares of 1*l.* each in this Company, and you will be pleased to pay the sum of 10*s.* per share to the Holborn Banking Company, to the account of the Company there

within fourteen days from the date hereof; otherwise this allotmei will be avoided.—I am, sir, your obedient servant,

JAMES THOMAS, Secretary.

To Mr. John Jones, 14, Milton-street.

P.S.—Be pleased to present the note on the other side at the ban and you will receive a voucher for such payment.

To the Holborn Banking Company.

GENTLEMEN,—Please to receive from Mr. John Jones, of 14, Milto street, St. Pancras, the sum of 2*l.* 10*s.*, being the first instalment of fi shares allotted to him in this Company, and give him the voucher f the same.

Yours, &c.,

JAMES THOMAS, Secretary.

The Clothing Company Limited,
21, Charles-street, 1st Aug. 1856.
Allotment No. 1.—Shares, five of 1*l.* each.

Some Companies have adopted the plan of requiring deposit to be made with the application for shares. Ther are advantages in this practice. It prevents a multitude merely speculative and inconsiderate applications, and is th best pledge of *bona fides*. Should it be desired to ado this course, the prospectus should state that "a deposit 5*s.* per share must be paid upon all applications for share to the account of the Company, at the Holborn Bank."

And the form of application for shares should in such ca be thus:—

To the Directors of the Clothing Company Limited.

GENTLEMEN,—Be pleased to allot me ten shares in this Company, account of which I have paid a deposit of 5*s.* per share to the account the Company at the Holborn Bank.

While shareholders are thus being obtained, the promote should employ themselves in settling

THE ARTICLES OF ASSOCIATION.

This document is described in the 14th section, whi thus enacts—

14. The Memorandum of Association may, in the case of a Compa limited by shares, and shall, in the case of a Company limited guarantee or unlimited, be accompanied, when registered, by Articles Association signed by the subscribers to the Memorandum of Ass ciation, and prescribing such regulations for the Company as the su scribers to the Memorandum of Association deem expedient: T articles shall be expressed in separate paragraphs, numbered arithm tically: They may adopt all or any of the provisions contained in t table marked A. in the first schedule hereto: They shall, in the c of a Company, whether limited by guarantee or unlimited, that has

capital divided into shares, state the amount of capital with which the Company proposes to be registered; and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the Memorandum of Association the number of shares he takes.

Now, it is necessary for the reader to understand what all this means, for it is very difficult to be gleaned from a cursory perusal of the act.

The following appears to be the construction of it.

Appended to the act, in a schedule, is a Table (A.) of Regulations for the management of a Company limited by shares. These are to be taken to be the regulations of the Company and equivalent to the deed of settlement under the old law, unless the Company shall, by Articles of Association, modify the whole or any part of them. Practically, therefore, the regulations would be merely recommendations, and not law, were it not enacted that all the regulations applicable to the particular Company are to govern it, unless modified by the Articles of Association. The consequence of this infelicitous form of law-making is, that if a Company should frame Articles of Association which did not embody every one of the regulations, the question would continually arise whether the articles were modified by the regulations, or to what extent.

Hence, it has appeared to us, after much consideration given to the point, to be the most prudent course to embody in the Articles of Association so much of the table of regulations as may be deemed convenient, that thus the entire code for the government of the Company might be found in its Articles of Association, without having to refer from them to the regulations in the schedule. With this view a form of Articles of Association has been prepared, which will embody so many of the regulations as appear to be good, modifying others to meet some difficulties which the author has found, from long experience, to arise in the conduct of Companies. As unlimited power is given to the promoters of Companies to frame their own regulations, which will not even be subjected to the scrutiny of the registrar, it is very desirable that advantage should be taken of the privilege to introduce every kind of protection which can be suggested;

these are therefore so prepared as to include whatever may be useful to any kind of Company, leaving to each Company to select such articles as may be best adapted to its peculiar circumstances. They are drawn with a view to the entire substitution of articles for the regulations, and the notes denote such modifications of the several articles as may seem to be required, in order to adapt them to different uses.

It is the more necessary that the utmost care, caution, and foresight should be used in the preparation of the Articles of Association, because they will constitute the code of laws by which the Company will be governed, and every act done in violation of them will be an illegal act, for which the directors or officers will incur a personal responsibility. It is enacted by sect. 16 that the Articles of Association shall, "when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this act."

Moreover, once registered, they cannot be changed without some difficulty. The Company is empowered by sect. 50 to alter and make new regulations at any time; but this can only be done by special resolution of the Company passed by three-fourths in number and value of the shareholders present in person, or by proxy, at a meeting called for the purpose, and afterwards confirmed by a majority of the shareholders present at a second general meeting, held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such special resolution was first passed: (sect. 51.)

The Articles of Association are to be printed, they are to be stamped with the deed stamp, and signed by each subscriber in the presence of a witness, who must attest the subscription: (sect. 16.)

The following may be the form of

THE ARTICLES OF ASSOCIATION.

They will be entitled thus:—

"*Articles of Association of the* *Company Limited.*"

It is agreed as follows:—

1. That the regulations of Table (A.) in the schedule to "The Joint

Stock Companies Act, 1862," shall not apply, and that these Articles of Association shall be substituted for such regulations.

2. That A.B., C.D., E.F., and G.H. shall be the first directors of the Company.

Note.—The subscribers of the Memorandum of Association will be the first directors, unless otherwise provided.

3. That L.M. shall be the managing director of the Company, with the salary of 700*l.* per annum.

Note.—This will be necessary where the promoter of a Company desires to secure to himself the reward of his own exertions in forming it.

4. That the Company purchase the business (or patent, as the case may be) of Mr. O.P., of , for the sum of 10,000*l.* in cash, and ten thousand shares in the Company acknowledged to be fully paid up.

Note.—This article will, of course, be omitted or varied according to circumstances; but where a purchase is designed, it is prudent to make the bargain compulsory upon the Company, instead of leaving it to subsequent ratification.

5. That P.Q. be retained as the manager of the business of the Company, at a salary of 600*l* per annum, and a commission of 3 per cent. on all sales effected, and that he be not dismissed except by special resolution of the Company, passed in the manner prescribed by sect. 51 of the said act.

Note.—It will be frequently necessary to introduce such an article as this, especially where the retainer of services is part of the consideration for the sale of the business of the Company. Where individual traders convert themselves into Limited Liability Companies, for the purpose of procuring the same privileges as the law has extended to their rivals, such a provision as above suggested is essential to the plan.

6. That R.S. shall be the solicitor to the Company, and that he shall not be dismissed except by special resolution of the Company, passed in like manner as in the last article is prescribed.

Note.—Experience has proved that it is necessary for all who undertake the labour and cost of getting up a Company to secure themselves in the offices which are the rewards of their exertions, by some such provision as those above suggested; otherwise they incur the greatest hazard of being ousted by those who have borne none of the burden, but who come in after the work is done and seize the lion's share of the spoil. The registrar was wont to object to the

insertion of such provisions as these in the deeds of settlement of Companies. But now the law permits the insertion of any terms the promoters may be pleased to introduce, and they would be unwise indeed not to include whatever may help to secure to themselves the fruits of their labours.

Of course, similar articles might be inserted for the securing of offices, with certain fixed emoluments, to any other persons.

7. That T. U., Esq., shall be the standing counsel to the Company.

8. That the materials required for the manufactures of the Company (as the case may be) shall be purchased of A.B., at the market price thereof, and that if any dispute shall arise as to such price, it shall be referred to arbitration, in the manner provided by sect. 72 of "The Joint-Stock Companies Act, 1862."

Shares.

9. That a person be deemed to be a member of the Company on his signing an acceptance of shares, or making any payment on account of them.

10. Every member shall, on payment of one shilling, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

11. Where several persons are registered as joint holders of any share, the receipt of one of them for any dividend payable in respect of such share shall be sufficient.

Transfer of Shares.

12. That no share shall be transferred until all calls made upon it be fully paid.

13. That the Company shall have a lien upon the shares of a member for any debt due from him to Company, and that the Company may refuse to register any transfer of shares made by a member who is indebted to them.

Note.—This is a very necessary provision, for hitherto a Company has had no lien upon the shares for the debts of a shareholder.

14. The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

15. Shares in the Company shall be transferred in the following form :—

I, A.B., of in consideration of the sum of pounds paid to me by C.D. of , do hereby transfer to the said C.D. the share [*or* shares] numbered standing in my name in the books of the Company, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof ; and I, the said C.D.,

do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands the day of .

16. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

17. The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his shares.

18. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, or in any way other than by transfer, may be registered as the member upon such evidence being produced as may be required by the Company.

Note.—We would suggest the omission of regulations 14 and 15 in Table (A.) to the effect that any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share, by executing to his nominee a deed of transfer of such share; because no substantial advantage is gained by it to the shareholder, while it would expose the Company to imposition of many kinds, as for instance, the transfer of liability from persons able to pay to paupers. It is one of those privileges which would be used only when there was an advantage to be gained by it at the expense of the Company.

19. If a transferor of shares is some other than the person whose name appears on the register as the member, the deed of transfer shall be accompanied with such evidence as may be necessary to show the title of the transferor, and no such transfer shall be valid until approved of, accepted and registered by the Company.

Calls.

20. The directors may from time to time make such calls upon the members, in respect of moneys unpaid upon their shares, as they think fit, provided that twenty-one days' notice at the least be given of each call; that no more than £ per share shall be called for at one time, and that calls shall not be made at less intervals than [*three*] months. The calls are to be paid in such manner as the Company may appoint.

Note.—Here, also, there has been added to the regulation (4) in the table a provision limiting the amount and the periods of call, so as to protect shareholders against unexpected claims and the liability to forfeiture for non-payment, of which designing directors might take advantage.

21. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

22. Calls may be made by resolution of the board of directors.

Note.—This is *an addition* to the regulations in the schedule, which omit to provide for the manner of making calls.

23. If any call be not paid by the member before or on the day appointed for payment thereof, such member for the time being shall pay interest for the same at the rate of 5*l.* per cent. per annum from the day appointed for payment thereof to the time of the actual payment.

24. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon his shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors may agree upon.

Forfeiture of Shares.

25. If a member fail to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, so long as the call remains unpaid, give notice to such member requiring him to pay such call, together with the interest due thereon, and expenses.

26. The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

27. If the requisitions of such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter before payment made of all calls, interest, and expenses due in respect thereof, be forfeited by a resolution of the directors declaring the same to be forfeited.

28. When any share has been so declared to be forfeited, notice of such forfeiture shall be given to such shareholder, and an entry thereof shall forthwith be made in the register of shareholders, stating the date of such forfeiture.

Note.—This is suggested as proper to be inserted in the articles; such a provision is omitted from the regulations; but it is manifestly desirable, and we would recommend its general adoption.

29. Any shares so forfeited shall become the property of the Company, and may be disposed of in such manner as the Company thinks fit.

30. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Note.—Formerly it was usual to prescribe in the deed of settlement the manner in which forfeited shares should be disposed of. It is much more convenient to leave it to the Company to determine this according to the exigencies of the moment.

31. A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be effected by any irregularity in the proceedings in reference to such sale.

Increase of Stock.

32. The directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock.

33. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

34. The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the Company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase of Capital.

35. The Company may, by special resolution, as hereinafter provided, increase its capital to a sum not exceeding £ , by the issue of new shares, such increase to be of such amount, and divided into shares of such amount, as the Company in general meeting may determine.

36. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom

such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

Note.—The regulations prescribe no limit. But that is an omission which the articles should supply.

37. Such increased capital shall for all purposes be considered part of the original capital, and subject to the same provisions, in all respects, whether with reference to calls, or forfeiture, or otherwise, as if it had been part of the original capital.

Management of the Company.

38. The business and affairs of the Company shall be conducted by the board of directors.

39. The manager (or secretary) of the Company shall be in all things subject to the control of the directors, and shall have no authority whatever beyond that which is given to him by the directors by resolution passed and recorded in the manner hereafter provided.

Note.—Neither of these articles is to be found in the *regulations*, but their utility is obvious. The act contemplates, although it does not prescribe, the changing of the name of secretary into that of manager, and it is desirable that the new name should not be understood as conferring any greater powers than the former one. It is necessary for the protection of the Company that the manager should have no authority to act on his own discretion without the authority of the board, otherwise he might involve the Company in serious liabilities. He should be required in all cases to take his instructions from the directors, who can, of course, where they think fit to do so, vest in him general powers for the accomplishment of a defined object. But these should be carefully and clearly recorded in the minute book that contains the proceedings of the board.

The Directors.

40. The business of the Company shall be conducted by *seven* directors.

Note.—This number is merely suggested as that which is found in practice to be most convenient for the conduct of the business of a Company.

41. The qualification of a director shall be the possession in his own right of *fifty* shares at the least for six months previous to his election as a director, except in the cases of the directors who are herein named as the first directors of the Company.

42. The first directors of the Company shall be A.B., of &c. (naming

them), who shall continue to be directors until disqualified by ceasing to be shareholders in the Company, or by any of the acts or defaults hereinafter named, until they shall retire in the manner prescribed by the next article.

43. At the first ordinary meeting after the incorporation of the Company, all the directors shall retire from office, but shall be eligible for re-election.

44. At the first ordinary meeting all the directors shall be elected. At the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office; it shall be determined by ballot which of the directors are so to retire in the first and second years, and afterwards those shall retire who have been longest in office.

45. A retiring director shall be always eligible to be re-elected.

46. Twenty-one days' notice at least shall be given to the Company by any person offering himself for election as a director, or by any person proposing another to be a director, and fourteen days at least before the general meeting a notice shall be posted to each shareholder of the names of the persons so proposed to be directors, and no person shall be eligible to be a director unless such notices shall have been given.

47. The Company shall at the general meeting fill up any vacancies in the office of director. But if at any meeting at which an election of directors ought to take place, no such election is made for want of properly qualified candidates, or any other cause, the meeting shall be adjourned for one month, and notices of the vacancies in the office of director, and of the cause and the time and place of such adjourned meeting, shall be forthwith sent by post to every shareholder, and until such adjourned meeting shall be holden and such vacancies filled, the former directors shall continue to act.

48. The Company may from time to time, by special resolution, increase or reduce the number of directors, so that the same shall not be less than three, and may also determine in what rotation such increased or reduced number shall go out of office.

49. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

50. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Note.—It will be seen that the greater part of these regulations, which were not found in the table appended to the former act, have been borrowed from this work by the framer of the new act. They were suggested by actual experience. They were never omitted from the old deeds of settlement, and still less can they be dispensed with now that such great facility is given to roguery. It does not

follow, because the law has provided impunity for fraud, that, therefore, Companies themselves should make no provision against it.

Powers of Directors.

51. The directors shall manage the business of the Company, and exercise all such powers as are not by the statute, or by these Articles of Association, declared to be vested in the Company in general meeting; subject nevertheless to the regulations prescribed by these articles, and to such resolutions, not being inconsistent with these articles or the statute, as may be passed by the Company or general meeting. But no resolution of the Company in general meeting shall invalidate any prior act of the directors, which would have been valid if such resolution had not been passed.

52. The continuing directors may act notwithstanding any vacancy n their body.

Disqualification of Directors.

53. The office of director shall be vested—

If he ceases to hold the qualification as a shareholder above required;

If he holds any other office or place of profit under the Company;

If he becomes bankrupt or insolvent or compounds with his creditors;

If he is concerned in or participates in the profits of any contract with the Company;

but the above rule shall be subject to the following exceptions:—That no director shall vacate his office by reason of being concerned in or participating in the profits of any contract, if the same shall be approved by the vote of the general meeting of the Company next following the making of the contract; nor by reason of his being a shareholder in any Joint-Stock Company which has entered into contracts with or done any work for the Company of which he is director. Nevertheless, he shall not vote in respect of any such contract, and if he shall so vote, his vote shall not be counted.

Proceedings of Directors.

54. The directors shall meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Three shall be a quorum. Questions arising at any meeting shall be determined by a majority of votes. In case of equality of votes, the chairman, in addition to his original vote, shall have a casting vote. Two directors may at any time summon a meeting of the directors on giving three clear days' notice thereof, but no resolution passed at a meeting so summoned shall be valid unless confirmed at the next regular meeting of the directors, except it be on some matter of urgency which requires to be done before such regular meeting is held.

Note.—Some modifications have been made in this article, for the purpose of preventing surprises by means of meet-

ings hastily called when it is known that some of the directors cannot attend.

55. The directors shall keep an attendance book in which each director present within fifteen minutes after the hour appointed for the meeting shall sign his name, which book, with an analysis showing the number of attendances by each director during the current year of office, shall be laid before every general meeting of the Company.

56. The directors shall elect a chairman of their meetings for each year. If at any meeting the chairman is not present at the time appointed for holding it, the directors present shall choose some one of their number to be the chairman of such meeting.

Note.—The regulations make the appointment of a permanent chairman optional. We are so assured of the importance of having a permanent chairman, acting as such so long as he continues a director, that we have made it compulsory. It is impossible that shifting chairmen can preserve that familarity with the business which a constant chairman of necessity acquires.

57. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

58. A committee may elect a chairman of their meetings. If no chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

59. A committee may meet and adjourn as they think proper; questions at any meeting shall be determined by a majority of votes of the members present. In case of an equal division of votes, the chairman shall have a casting vote.

60. All acts done by any meeting of directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

61. The directors shall cause minutes to be made in books provided for the purpose.

1. Of all appointments of officers made by the directors.
2. Of the names of the directors present at each meeting.
3. Of all acts done and resolutions made or passed by the directors and committee of directors, and of all moneys ordered to be paid, and of all the proceedings of every meeting of the directors and of the Company.

And the minutes of the proceedings shall be signed by the chairman.

62. The directors shall keep a book showing a general account of the moneys received and paid up to the date of the meeting, with a balance struck showing the state of the cash account, which book shall be pro-

duced to the board at each meeting and signed by the chairman, in acknowledgment of such production.

Note.—This is a new provision to secure, as far as possible, the board from ignorance of the actual state of the affairs of the Company.

63. The Company may, by special resolution, in the manner hereinafter provided, remove any director before the expiration of the period of his office, and appoint another qualified person in his stead; but the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

64. The directors shall not contract any loan beyond the sum of 100*l.* without the consent of the Company by special resolution.

Note.—It is generally desirable to introduce some such provision as this; for, although the creditors are protected as against the borrowers by their limited liability, their invested capital may be thus jeopardised. On the other hand, it must be remembered that, with limited liability, in case of failure of the purpose for which the loan was contracted, the loss falls upon the lender, while, if it succeeds, the profit wholly belongs to the shareholders. It will, therefore, be a matter for consideration, and this article may be used or rejected according to the circumstances of the particular case. It should be stated that no such provision is contained in the "Regulations." The same remarks apply to the next, which is also a new one; but if any restriction be placed upon the directors' power to contract, the amount should be regulated by the nature of the business, bearing in mind that the Company is to be wound-up whenever three-fourths of its capital shall become unavailable, as it might if locked up in a single contract not convertible into cash.

65. The directors shall not enter into any contract above the value of 20*l.* except the same be in writing; nor shall they enter into any contracts whatever exceeding in value the sum of [1000*l.*, or as the case may be] without the consent of the Company by special resolution.

66. The directors are to appoint and dismiss all the servants of and persons employed by the Company, except the manager, solicitor [or, as the case may be], who are only to be dismissed in the manner hereinbefore provided.

67. The directors shall be paid such sum for their services for the past year as the Company, at the annual general meeting, shall determine, such sum to be divisible among the directors in proportion to the number of attendances of each, as shown by the attendance book.

Accounts.

68. The directors shall cause true statements to be kept in four separate books.

1. Of the stock-in-trade of the Company;
2. Of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place;
3. Of the debts of the Company;
4. Of the credits of the Company;

which statements shall be made up to the last day of every month.

69. The directors shall cause the accounts of the Company to be kept upon the principle of double entry, in a cash book, journal, and ledger. The four books described in the last article, and also the books of account, shall be kept at the principal office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of any shareholder during the hours of business.

Note.—The regulations provide only for books of account. But these would be entirely unintelligible to a shareholder who should turn over the leaves. Therefore we have introduced an article requiring a statement of sums total, which would enable any inquirer to ascertain in a few minutes what is the true position of the Company.

70. Twice in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure of the past half-year, made up to a date not more than two months before such meeting.

71. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

72. A balance-sheet shall be made out in the month of in every year, and laid before the next general meeting of the Company, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to these articles, or as near thereto as circumstances admit.

Note.—Annex the form of balance-sheet in the first schedule to the act.

73. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Auditors.

74. The Company shall, at the first general meeting in each year, elect

one or more auditor or auditors. The auditor for the first year shall be appointed by the directors.

75. If not more than one auditor be appointed, all the provisions herein contained relating to auditors shall apply to him.

76. The auditors need not be shareholders in the Company. No person shall be eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer shall be eligible during his continuance in office.

77. Notice of intention to propose any person to be an auditor shall be given to the directors fourteen days at least before the general meeting, and they shall cause notice of such intended proposal to be sent by post to all the shareholders seven clear days at least before the general meeting.

78. The remuneration of the auditors for the first year shall be fixed by the directors, for subsequent years it shall be fixed by the Company at the time of their election.

79. Any auditor shall be re-eligible at the expiration of his year of office.

80. If any casual vacancy shall occur in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

Audit.

81. One month at least before each general meeting the accounts of the Company shall be audited by the auditors, who shall give to the directors ten days' notice of the day appointed by them for such audit.

82. The directors shall supply to each of the auditors, seven days before the day appointed for the audit, a copy of the balance-sheet.

83. At the audit it shall be the duty of the auditors to examine the balance-sheet, with all accounts and vouchers relating thereto.

84. Each auditor shall be supplied with a list of the books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company, and, at the expense of the Company, he may employ accountants or other persons to assist him in investigating such accounts, and he may examine the directors or any other officer of the Company in relation to such accounts.

85. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these Articles of Association, and properly drawn up so as to exhibit a true and correct view of the Company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given, and whether they have been satisfactory. And such report shall be read, together with the report of the directors, at the ordinary general meeting of the Company.

Note.—The two last articles have been taken almost *verbatim* from the regulations.

General and Extraordinary Meetings.

86. The first general meeting of the Company shall be held at such

time, not being more than seven months after the incorporation of the Company, and at such place as the directors may determine.

87. Subsequent general meetings shall be held on the first Monday in February and the first Monday in August in every year, at such place as may be determined by the directors.

88. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary meetings.

89. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of members holding in the aggregate not less than one-tenth part of the shares of the Company, convene an extraordinary general meeting.

90. Any requisition so made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

91. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members holding the required number of shares, may themselves convene an extraordinary general meeting.

92. Fourteen days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner, if any, as may be prescribed by the Company.

93. Any member may, on giving not less than seven days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

94. The notice so required of a member shall be given by leaving a copy of the resolution at the registered office of the Company, a copy of which notice shall forthwith be sent to all the members.

Proceedings at General Meetings.

95. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows: that is to say, if the members of the Company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed forty.

96. If within one hour from the time appointed for the meeting the required number of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case, it shall stand adjourned to the following day, at the same time and place; and if at such adjourned meeting the required number of members is not present, it shall be adjourned *sine die*.

97. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

98. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

99. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

100. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution.

101. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

102. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

103. Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

Note.—This proportion of votes to shares may be determined according to the pleasure of the promoters. The act prescribes no numbers, and the above is merely a suggestion of a proportion which has been found to work well in practice. It was proposed in the former edition of this work, and has been adopted by the new statute.

104. If any member is a lunatic or idiot, he may vote by his committee, *curator bonis*, or other legal curator; and if any member is a minor, he may vote by his guardian, tutor, or curator, or any one of his guardians, tutors, or curators, if more than one.

105. If one or more persons are jointly entitled to a share or shares, the person whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

106. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by the custom of the City of London, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

107. Votes may be given either personally or by proxy.

108. The instrument appointing a proxy shall be in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witnesses.

109. No person shall be appointed a proxy who is not a member of the Company, and the instrument or mandate appointing him shall be deposited at the registered office of the Company not less than forty-

eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of six months from the date of its execution.

110. Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I, of , in the county of , being a member of the Company Limited, and entitled to vote *or* votes, hereby appoint , of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof [*or*, at any meeting of the Company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

Dividends.

111. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

112. No dividend shall be payable except out of the profits arising from the business of the Company.

113. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

114. The directors may deduct from the dividends payable to any member of such sums of money as may be due from him to the Company on account of calls or otherwise.

115. Notice of any dividend that may have been declared shall be given to each member, or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

116. No dividend shall bear interest as against the Company.

Notices.

117. Notices requiring to be served by the Company upon any member may be served either personally, or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

118. All notices directed to be given to the members shall with respect to any share to which persons are jointly entitled be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

119. All notices required by this act to be given by advertisement shall be advertised in a newspaper circulating in the district in which the registered office of the Company is situate.

120. Any notice, if served by post, shall be deemed to have been

served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

To the above Articles of Association, which are applicable to all Companies, there may be added special ones framed to meet the requirements of the particular Company. There will be no difficulty in expressing these, taking care only that the desired object be clearly stated.

The articles, when so completed, should be printed, and a copy of them signed by the same seven shareholders who have signed the Memorandum of Association, to which they should be annexed, and delivered to the registrar. They will be thenceforth the code of laws by which the Company will be regulated; every member will be bound by them as if his hand and seal had been subscribed thereto, and they can be altered only by special resolution, passed in the manner prescribed by the act, and hereafter fully described. A printed copy should also be sent to every member, and copies should be kept for sale to members at a small price.

It is now proposed to offer some suggestions, derived from the author's experience of the working of the machinery of a Joint-stock Company.

Practical Hints for the Formation and Management of a Joint-stock Company.

As for the *number* of directors, we have but one suggestion to offer. Let them be as *few* as possible. There is no greater obstruction to business than a large board. Five are ample for all purposes. Every additional head is only an addition of doubt, division and delay, and the time which should be devoted to action is wasted in discussion and debate. It is impossible to find a dozen persons who will be of one mind on any subject whatever. As all the members of a direction are of equal authority, each has a right to be heard, each is entitled to equal attention, and each one will be sure to exercise his right, if only to prove that he possesses it. In a large board, let any proposition, however trifling, be started, and it will be sure to find somebody hesitating or objecting; questions are asked and must be

answered; this will lead to discussion, and the business which two or three men, well matched, would dispatch in five minutes, occupies an entire sitting of the board, while important matters are deferred, and the golden opportunities, the seizing of which is the secret of success, are irrevocably lost. This mistake of having large boards for the sake of *names*—for there can be no other use in them—is the true reason why Joint-stock Companies are so rarely enabled to compete successfully with individuals, in spite of their advantages in other respects. They want unity of purpose and promptitude in action. Knowing what is their defect, the promoters of Companies should remedy the mischief, so far as they can, by restricting the number of directors to the smallest that is capable of conducting the business. The number we recommend is five, which will probably secure the attendance of three. Having had practical experience both of a board of twelve and a board of five, we have no hesitation in giving the preference to the latter, and earnestly recommending the adoption of that number by limited liability Companies of ordinary magnitude. Of course there are projects so large as to require a much larger board, sufficient to admit of division into several committees for the conduct of sub-departments of the business; but for the usual objects of such Companies, five directors are amply sufficient.

There is another reason for a small number. The responsibility is less divided. In a large board, every director feels that he is responsible only for a tenth or a twentieth of the blame of error—nay, he is scarcely conscious of any individual responsibility whatever. Precisely as the numbers are diminished does the sense of personal responsibility grow, and we need not say that, in proportion as the directors feel themselves personally interested in the prosperity or otherwise of the concern, so will their attention be given to it. There is also another consideration, not less important. Directors are entitled to liberal remuneration for the time and thought they devote to the affairs of the Company. But the directors' fees are seldom proportioned to the number of directors. Whether the board be large or small, it is usual to vote the same fee. To the Company it matters not; but in its result to the recipients it is important whether the fee be divisible among twelve or five. In the one case it is scarcely worth attention; in the other it is really a remuneration, and exertion is thus not only stimulated but rewarded.

For all these reasons we recommend that the Articles of Association should provide that—

The board do consist of *five* directors.

That two shall retire the first year, two the second year, and one the third year; but to be eligible for re-election.

That the order of retirement shall be determined by lot.

Shareholders cannot act on their own behalf in the ordinary management of the concerns of the Company; they can act only through the directors, who are constituted their agents for all the purposes of the business. Consequently, the Company is not bound by contracts made on its behalf by any other than the directors, upon the principle *delegatus non potest delegari* ("an agent cannot delegate his agency"), unless, of course, he be authorised by the terms of his agency to appoint a sub-agent, as in *Smith* v. *The Hull Glass Company* (11 C. B. 897), where the deed of settlement provided for the appointment of a manager of works "to superintend and transact, under the control of the board of directors, the manufacturing business of the Company," and to whom the board of directors were by another clause authorised to delegate "such and so many of the powers thereby given to them as would enable him to carry on the said works and manufacturing business in an efficient manner." The Company was held to be liable for goods supplied on the order of such manager, although there was no *express* delegation of authority. It was also held that the Company was liable for goods supplied on the orders of unauthorised persons, such as the chairman, deputy chairman, and secretary, when such goods were with the knowledge of the directors received on the premises, and used by them for the purposes of the trade.

The Directors, their Duties, Powers, and Liabilities.

A director must hold one share at least in his own right.

A director is disqualified by ceasing to be the holder of the under the Company, or if concerned or participating in the prescribed number of shares, or by becoming bankrupt or insolvent, or by holding any other office or place of profit profits of any contract, or in the profits of any work done for the Company. But the discovery of previous disqualification is not to invalidate acts done before such discovery, if done *bonâ fide*:

Directors cannot legally act in their individual capacities,

but only as a board, and only for the performance of such acts as the general law, or the Joint-Stock Companies Act, or the Articles of Association, may empower them to perform; for all their powers arise from the statute that constitutes them a corporation, and if they do not act in strict performance of those powers, and especially if they exceed them, they will be personally responsible to the parties with whom they deal. It is very important that directors of Companies with limited liability should be thoroughly conscious of this liability, to which there is no limit. They may be sure that disappointed creditors will look very keenly to find, if they can, a remedy against the directors of which the law has deprived them as against the members, and if the directors should exceed their powers, or exercise them irregularly, advantage will certainly be taken of it to enforce the claim against themselves personally.

The directors are personally exempted from liability. They are not responsible for errors of judgment, and they can only be dismissed at the triennial ordeal of re-election. They are, however, punishable for mutilating, altering, or falsifying any books, papers, writings, or securities, or making any false or fraudulent entry in any register, book of account, or other document: (sect. 166.) The court by which the Company is wound-up may also assess damages against delinquent directors, and compel repayment of moneys misapplied or retained, with interest, or such compensation as it may think just to be made, notwithstanding that the offence is a criminal one: (sect. 165.) The court is likewise empowered, on the application of the liquidator, or any person interested, or of its own motion, to direct the prosecution of any director or officer guilty of any criminal act, and to order the costs to be paid out of the estate: (sects. 167, 168.)

It is established law by the solemn decision of the House of Lords, that if a director, or any officer, of a Company, be a party to the issue of reports, knowing them to be false, any person thereby induced to purchase shares may recover from such director or officer all damages thereby sustained, and that this liability extends to a secretary or other officer knowingly supplying the materials for such false report: (*Cullen* v. *Thompson*, 6 L. T. Rep. N. S. 870.) And sects. 81 to 83 of the Larcenies Act enacts—that a director, member, or officer of any public Company who shall "fraudulently take or apply for his own use or benefit or for

any use or purposes other than the use or purposes" of such Company, any of the property of such Company, shall be guilty of a misdemeanor; and that any director, public officer, or manager of any public Company who shall "as such receive or possess himself of the property" of such Company, "otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts" of such Company, or shall, "with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to" the Company, or make or concur in making any false entry in the same, shall be guilty of a misdemeanor (24 & 25 Vict. c. 96, ss. 81 to 83). Sect. 84 we present *verbatim*—

84. Whosoever, being a director, manager, or public officer of any body corporate or public Company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public Company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public Company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

Proceedings of the Board of Directors.

The days and hours for the ordinary meetings of the board should be appointed by a general rule, and not be permitted to be changed, except on special occasions, and with ample notice to every member of the board. This is absolutely necessary to prevent surprises; otherwise advantage might be taken of times, when some of the directors are unavoidably absent, for the others to pass resolutions which had been objected to by the majority of a full board.

It is usual and desirable to observe strict punctuality in the hour of meeting. An attendance book should be kept in which the directors present may sign their names at every meeting. Whatever the appointed hour of meeting, a few minutes of grace should be allowed. The moment the clock points to the time elapsed, the secretary should hand the attendance book to the chairman, who should draw a line across it under the last name, and sign his own name. Any director appearing after this will write his name below the

line, and then he will not be entitled to count his presence as an attendance for the division of the directors' fees.

The secretary, with his books and papers, should always be seated at the board by the side of the chairman, and the directors should range themselves on either side of the table, supplied with pens and paper. It will be found convenient for each director to have a portfolio, with his name upon it, for his own use, in which he may preserve his own memoranda, and in some board rooms a drawer in the board table is appropriated to each director. It will be found in practice that after two meetings every member of the board will take and keep his own seat.

We have already recommended a perpetual chairman. It is not necessary to repeat the reasons for that arrangement.

If a quorum is not present, the board cannot proceed to business *as a board.* But there is usually a good deal of routine business to be done. In such cases, the most convenient course is for the directors present to resolve themselves into a committee, and to act provisionally; that is, subject to confirmation of their proceedings by the next board. These should be entered in the committee book, and not on the minutes of the board, until the next meeting of the board, when they should be read and adopted as part of the proceedings of the board on the day on which they are approved, and ultimately entered in the minute book as part of the business done on *that* day, and not on the day of the committee meeting.

If a quorum is present, the first business to be done will be the reading by the secretary of the minutes of the last board, and thereupon the chairman moves "that the minutes now read be affirmed." If no objection be made, he signs them as the record of the acts of the previous board.

As this proceeding is commonly misunderstood, and error may occasion some inconvenience, a brief explanation of it may be useful.

It is not, as is generally supposed, a *confirmation* by the present board of *the acts* of the last board, for that would imply that the concurrence of two boards is necessary to the validity of any vote, and it would involve the absurdity of empowering those who were not present when the subject was discussed to rescind a resolution formally carried. The proceeding is in truth nothing more than an *affirmation* by the present board that the secretary had rightly entered

the minutes of the proceedings of the last board, and that they were as they appear upon the book, and, as a voucher for this, the chairman signs it. This is why we have given the formula of putting this vote to the meeting with the word *af*firmed instead of *con*firmed, which latter is more frequently used, because the purpose of the proceeding is not generally understood.

For the same reason it is not competent to any director, upon the reading of the minutes of the last board, to raise any other question upon them than if they were as stated. The subject-matter of them cannot be reconsidered in that form, nor without the notices required for rescinding a resolution.

The chairman should always be provided by the secretary with a book containing the "*agenda*" for the day, of which a copy should be before himself, and the business should, if possible, be taken in the order there set down. The chairman will direct the attention of the board to the first matter in the list, and having stated the facts, or called upon the secretary to do so, he will ask the directors present if they have anything to say upon it. The usual rules of debate will be observed. The chairman should always be addressed; he should exercise his authority to prevent interruptions and to check altercations, and it is especially his province to mediate between conflicting parties and opinions, and prevent personalities. Where there is agreement on a matter of business, it is not necessary to put it into a formal resolution; but if there is a difference of opinion, and agreement is not probable, he should require that the resolution, and the amendment, should be put upon paper. He must then read them both, and say, "I now proceed to put the amendment first." Then, having read it again, he will say, "Those who are for the amendment will hold up their hands;" having counted them, he will say, "Those who are against it will hold up their hands;" and having counted them also, he will declare the majority. If there should not be a majority for the amendment, he will put the original resolution, which must be passed by a majority of votes.

If the votes are equally divided, the casting vote is given by the chairman, who will then exercise one of his most disagreeable duties according to his discretion. But the chairman possesses a vote on all questions in common with the other directors, and the casting vote is *in addition* to his regular vote.

Great care should be taken that the proceedings be accurately entered in the minute book. If the resolution was in writing, it should be copied *verbatim*. The entries of the proceedings of the day are usually made in the *agenda* book by the chairman, and thence they are copied by the secretary into the minute book, and being read from that, are affirmed at the next board, and then signed by the chairman.

We recommend a board to make as *few* general rules as possible for its governance, for they too often operate as impediments to business, and occasion injurious delays or compel their own violation. Rules should be strictly confined to the *forms* of business, and have for their single object the prevention of surprises. Be very careful not to subject to them any matters of business, but only *the machinery* of the board. But among the rules should be one requiring notice to be given of a motion on any matter not within the ordinary routine of business. This notice should be given at the preceding board, and a copy of it sent by the secretary to each of the directors. Another rule should require the like notice of motion to rescind an existing resolution or rule.

It is advisable to make all payments by cheque, signed by two directors and countersigned by the secretary, and these should be formally ordered by the board, and entered on the minutes. The petty cash disbursements should be made by the secretary, to whom a cheque for a required sum should be given, and for this he should account in his *petty cash book*, which should be laid before the board at every meeting, and there examined, some one director regularly undertaking the duty of inspecting the items of expenditure to see that they are unobjectionable.

At each meeting of the board the cheques returned from the bank should be compared with the entries in the order for payment, as a security against an alteration of the cheque after its issue by the board, and the chairman should place his initials against the entries in the minute book, to show that the corresponding cheques had been duly examined.

The *banker's book* should also be submitted to the board at each meeting, and inspected in like manner.

Another very necessary book, especially in a limited liability Company, will be a list of all the *unpaid* debts of the Company, with the periods at which they become payable. This may be called the *liabilities' list.*

Another useful book would be a list of *the bad debts or losses;* but not to multiply books, this record may be contained in the same book with the liabilities' list.

A guarantee of fidelity should be required from every servant of the Company, according to the amount of money or goods entrusted to him. This should be an inflexible rule, even if the Company should pay the premiums.

As a general rule, it is desirable to vest large discretionary power in the secretary or manager, only making him responsible for its exercise. A board cannot possibly act with sufficient promptitude in the ordinary affairs of business, and many advantages may be lost by delay for the purpose of obtaining a formal consent.

The Auditors and the Accounts.

Every Joint-stock Company should annually, at the general meeting, appoint one or more auditors, who need not be members. But no person should be elected as an auditor who is interested, otherwise than as a shareholder, in any trading transaction of the Company.

The remuneration may be fixed at the time of election.

If a casual vacancy occurs, the directors should summon an extraordinary general meeting to elect another auditor.

If no auditors be elected, then, on application of one-fifth of the members (and in the case of a banking Company, of members holding one-third of the whole shares), the Board of Trade is authorised to appoint one or more inspectors to examine, and report on the affairs of the Company, or the Company may by special resolution, appoint such inspectors: (sect. 60.)

It appears not to be generally understood that it is the duty of the directors to prepare the balance-sheet. The duty of the auditors is only to see that it is correct. Some auditors have supposed that they are empowered to frame a balance-sheet after their own fashion, and throw aside that of the directors. It is not so. If the auditors object to the directors' balance-sheet, as incorrect in figures, they may correct it; but if they object only to its form, they should state their objection to the board and procure its assent to an alteration. Should the board refuse, the auditors may report their objection to the members.

It is usual for the auditors to appoint a day for meeting at the offices of the Company, and there, with the secretary

and book-keeper, they go through all the accounts and compare them with the vouchers.

The auditors should make a report to the members upon the balance-sheet and accounts, and state whether, in their opinion, the balance-sheet is a full and fair balance-sheet; and in case they have called for explanations or information from the directors, whether such have been given, and are satisfactory.

Members and Shares.

It has already been stated that the shares may be of any amount, however small, and that no portion of them is required to be paid up.

As a Company may now be formed so soon as seven shares are *subscribed*, it will be neither prudent nor necessary to allot shares before incorporation. Hence, all the questions as to the liabilities of shareholders on provisional registration are now swept away.

A "member" or shareholder is defined by the act to be "The subscribers to the Memorandum of Association, and every other person who has agreed to become a member of a Company under this act, and whose name is entered on the register of members:" (sect. 23.)

No notice of any trust, express, implied, or constructive, is to be entered on the register as receivable by the Company: (sect. 30.)

As soon as the Company is incorporated, the shareholder is entitled to a certificate of his shares; and, for the purpose of transfer, it is desirable to give him a separate certificate of each share in the following form:—

Certificate of Share.

The Company, incorporated on the day of , 18 .
Number

This is to certify, that A.B., of , is the proprietor of the share, Number of the Company, subject to the regulations of the said Company, and that up to this day there has been paid up in respect of such share the sum of . Given under the common seal of the said Company, the day of , in the year 18 .

[*Signature of two Directors.*] (L. S.)

Entered by [*Signed by Secretary.*]

The directors are required by sect. 25 to keep a book to be called the *Register of Members*, and to enter in it the following particulars:—

(1.) The names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a

Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member :

(2.) The date at which the name of any person was entered in the register as a member :

(3.) The date at which any person ceased to be a member.

This register must be kept at the office of the Company, and every member may search this register gratis at all times during business hours, and any other persons may do so on payment of a fee not exceeding 1*s.* : (sect. 32.) The certificate of the share is *primâ facie* evidence of the title of the shareholder to the share therein specified : (sect. 31.) An annual list is to be made of the names, addresses, and occupations of all persons who, on the fourteenth day after the annual meeting, are shareholders, and the number of shares held by each, and also a summary containing the following particulars :—

(1.) The amount of the capital of the Company, and the number of shares into which it is divided :

(2.) The number of shares taken from the commencement of the Company up to the date of the summary :

(3.) The amount of calls made on each share :

(4.) The total amount of calls received :

(5.) The total amount of calls unpaid :

(6.) The total amount of shares forfeited :

(7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

This list and summary is to be in a separate part of the register, and to be completed within seven days after the fourteenth day above-named, and a copy sent to the registrar : (sect. 26.) The Company is liable to a penalty of 5*l.* per day for each day this register is not kept or list not sent to the registrar : (sect. 27.) But the Company may, on notice given by advertisement, close the register for a period not exceeding thirty days in each year : (sect. 33.)

A shareholder may sell or transfer his shares by deed, duly stamped, in which the bare amount of the consideration is expressed. The form of transfer may be as follows :—

Transfer of Shares.

I, A.B., of , in consideration of the sum of paid to me by C.D., of , do hereby transfer to the said share [*or* shares], numbered in "The Company," standing in my name in the books of the Company, to hold unto the said , his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I held the same at the time of

the execution hereof. And I, the said , do hereby agree to take the said share [*or* shares] subject to the same conditions.

As witness our hands and seals, the day of .

[*Signature.*]

On the production of this transfer, duly stamped, the directors should cause a memorial of it to be entered in a book, which may be called the *Register of Transfers*, and alter the register accordingly.

The purchaser of a share cannot receive dividends or vote until the transfer is produced and registered. The transferor will be deemed to be the shareholder until the transfer is registered.

But a shareholder cannot transfer his shares merely to evade his liabilities. In *Chinnock's case* (1 L. T. Rep. N. S. 435), where the appellant had transferred his shares to his clerk when the Company was in difficulties, the court held it to be a colourable transfer, and declared the transferor to be a contributory.

If a shareholder neglects to pay a call when due, the Company may sue for the amount in an action of debt in any court having competent jurisdiction in respect of the same. He may, therefore, be sued in the county courts for sums within their jurisdiction. In the declaration it is only necessary to state that the defendant "was at the commencement of the suit the holder of (so many) shares in the Company (naming it), and was indebted to the Company in (so much) for certain instalments of capital then due and payable in respect of the said shares, and that the defendant had not paid the same." At the trial it is only necessary to prove that the defendant was the registered holder of the shares (which is done by the production of the register of shares), the making of the call, and notice given, according to the requisitions of the deed, and the Company will recover so much as is due, with interest at the rate of five per cent. per annum, computed from the day on which the call became due. The register of members is by sect. 37 made *primâ facie* evidence of the matters required by the act to be inserted therein.

A shareholder may free himself from liability for calls by transferring his shares and having the transfer duly registered before the call is made. But, after the call is made, the shares cannot be transferred, so as to relieve the transferor from liability, until the call due upon them is paid.

Nor does the death of a shareholder free his estate from

liability for calls that became due subsequently to his death. They can be recovered from his executors: (*Tyler* v. *Tyler*, 2 Rail. Cas. 813.)

If a share is held jointly by two or more persons, any notice required to be given to them may be given to the one whose name stands first on the register of shareholders, and a notice so given is notice to all the proprietors of such share.

And the person whose name stands first should be the person entitled to vote in respect of that share, and to receive all the privileges of the shareholder.

Any Company that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, must give notice of it to the registrar (sect. 28); and where this has been done, the provisions of the act applicable to shares only are to cease as to so much of the capital as is so converted into stock, and the register and list are to show the amount of stock held by each member, instead of the shares, and the particulars relating to them before required: (sect. 29.)

A certificate under the common seal of the Company is to be *primâ facie* evidence of the title of the member to the shares or stock there specified: (sect. 31.)

Where there has been an increase of the capital beyond the registered capital, or an increase in the number of members in Companies not being Joint-stock Companies, notice of such increase is to be given to the registrar within fifteen days from the passing of the resolution at which such increase has been authorised, under a penalty of 5*l.* for each day of neglect to do so: (sect. 34.)

If the name of any person is, without sufficient cause, entered in or omitted from the register, or if there shall be default or unnecessary delay in entering on the register the fact that any person has ceased to be a member, the courts may, on application, order the register to be rectified, and direct costs and damages to be paid, and notice of such rectification is to be given to the registrar: (sects. 35, 36.)

Effect of Incorporation.

On obtaining the certificate of registration, the Company becomes *incorporated*, as from the date of certificate, by its name as set forth in the Memorandum of Association, for the purpose of carrying on the trade or business for which it was formed, but only according to the provisions of the statute and of the Regulations or Articles of Association. It

will have a perpetual succession and a common seal, with power to hold lands. The certificate of the registrar is to be conclusive evidence that all the requisitions of the act in respect of registration have been complied with: (sect. 13.)

The greatest care must therefore be taken, in conducting the business of the Company, to keep within the limits of its objects. It is incorporated only for the particular purpose named in the Memorandum of Association. If it should undertake any other business, or do any act not within the reasonable scope of that business, neither the directors, nor, perhaps, the members, would be protected by the statute. Beyond all doubt the directors would be personally liable, without limit, to parties with whom they deal for all such unauthorised contracts, and they would be personally responsible to the members for any losses that might thence accrue to the Company. It will be a question whether even the members could plead their limited liability to a claim for contracts so made by directors, who would probably be held to be their agents, for whose acts they would be responsible, especially if they should sanction them directly at a general meeting, or indirectly by the receipt of profits. For it must be remembered that the privilege of limited liability is given only to persons incorporated for certain defined purposes. If they travel out of those purposes into others for which they are not incorporated, they lose *pro tanto* the benefit of incorporation, and consequently the privilege of limited liability which is attached to it.

It is difficult to describe in popular language the meaning of *incorporation;* but as persons who take shares in Limited Liability Companies ought to know what they are joining, we will endeavour to make it as intelligible as we can.

Incorporation, then, is the union of many persons for one defined object, the law permitting them to call their association by a name which embodies, as it were, the object of the association, as distinct from the individual members of it. It differs from an ordinary partnership in this, that in the latter there is no distinction between the partnership and the individual partners, the law looking upon A., B., C., and D. still as individuals. But, with an *incorporated* Company, the law does not recognise the individual member at all. It knows only "the Company," or Corporation, as if it was a being distinct from the members who compose it. By its corporate name it is always called; by that name it sues, and by that name it must be sued. And inasmuch as

there must be some visible sign to exhibit the acts of this ideal personage, the law has appointed that a common seal shall be the public representative of a corporation, and the form by which its acts shall be authenticated.

The effect of incorporation is therefore to merge the individual member in the corporate body; and the shareholder exists apart from the corporation of which he is a member. From this, very important and very useful consequences proceed. A member can sue the Company, and the Company can sue a member, neither of which can be done in an ordinary partnership, because the parties would, in fact, be suing themselves. A partner has equal powers with the other partners, can interfere equally in the business, incur debts to bind the rest, and receive moneys and effects which he can only be made to account for by a very costly and tedious process. But, in an incorporated Company, the member has no right to interfere except in the manner prescribed by the Articles of Association; he constitutes the directors his agents for the purposes of the business, and is bound by their acts within the limit of his liability. He can transfer his shares without the consent of the other members of the Company, which in an ordinary partnership cannot be done, the shares go by transmission to his representatives, there is no survivorship, nor is death a dissolution of the partnership.

Contracts by Companies.

The general rule of law is, that a corporation cannot contract but under its common seal. But the manifest inconvenience of such a requirement in a trading corporation has induced the courts to relax the strictness of the law in this respect, and to recognise in Companies incorporated for trading purposes power to contract by other means.

The exceptions thus recognised are in cases where the rule would cause great inconvenience or tend to defeat the very object of the corporation; the doing of small acts requiring frequent repetition; the employment of servants daily or weekly, and other acts too insignificant to be made the subject of such a formality.

If work be done for a corporation for purposes connected with it, under a verbal order, and accepted and adopted by the corporation, it cannot answer to an action for such work, that it was not ordered under seal: (*Haigh* v. *Bierley Union*, E. B. & E. 873.) And authority may be inferred from the

conduct of the directors, in formally sanctioning similar orders by their officers: (*Cox* v. *The Midland Counties Railway*, 3 Exch. 268.)

Bills of exchange and promissory notes by the Company may be made, accepted, or indorsed in the name of the Company, or by or on behalf or on account of the Company, by any person acting under the express or implied authority of the Company: (sect. 47.)

A bill of exchange drawn on a completely registered Company by its corporate name was accepted by two of the directors in this form: "Accepted, J. B. and E. M., directors of the corporate Company appointed to accept this bill." It was sealed with the corporate seal, which had the corporate name upon it, and countersigned by the secretary. It was held to be duly expressed to be accepted on behalf of the Company within sect. 45: (*Halford* v. *Cameron's Coalbrook Iron Company*, 17 L. T. Rep. 25; 20 L. J. 160, Q. B.)

Directors were empowered by a deed of settlement to issue a promissory note or accept a bill of exchange for the balance that might remain due on certain purchase money not exceeding 1000*l.*, but not to contract any other debt beyond 100*l.* The meaning of this authority was held to be, that the directors might contract the debt to that amount, and then give security for it, with lawful interest, by several notes or bills instead of by a single note or bill: (*Thompson* v. *The Wesleyan Newspaper Association*, 8 C. B. 849.)

The following, signed by two directors, and having the seal of the Company, was held to be a note binding on the Company: "Three months after date, we, two of the directors of the B. Society, by and on behalf of the said society, do hereby promise to pay to C., or order, the sum of 67*l.* 10*s.* 6*d.*, value received." There was no counter signature by the secretary: (*Aggs* v. *Nicholson*, 1 H. & N. 165; 28 L. T. Rep. 66.)

A promissory note in this form: "Three months after date, we jointly promise to pay B., or order, 600*l.* for value received in stock on account of the C. Company," was signed by three of the directors. It was held to be made in the name of the Company: (*Lindus* v. *Melrose*, 27 L. J. 326.)

A bill of exchange was addressed to a Company, as drawers, in their name, omitting "limited," and B., being authorised, accepted it in his own name, adding, "secretary

to the said Company." He was held to be personally liable: (*Balfour* v. *Ernest*, 32 L. T. Rep. 295.)

Where the general purport of the deed was that the directors should carry on the business with the capital of the Company, a general clause in it stated that "the affairs and business of the Company shall be under the sole and entire control of the directors, of whom there shall not be less than five, nor more than nine, and three of them shall form meetings of the directors, and shall for all purposes be competent to act." It was held that this did not give them authority to borrow money on mortgage for the purposes of the Company: (*Burmister* v. *Morris*, 17 L. T. Rep. 232.)

A Company, established for the manufacture of glass, was empowered by the deed to appoint a manager of the works and factories "to superintend and transact, under the control of the Board of Directors, the manufacturing business of the Company," and the Board was authorised to delegate to him "such and so many of the powers hereby given to them as would enable him to carry on the said works and manufacturing business in an efficient manner. "The Company was held to be liable for goods supplied to it on the order of such manager for the purposes of their manufacture, although there was no express delegation of authority; and it was also held to be liable for goods supplied on the orders of unauthorised persons, as the chairman, deputy chairman, and secretary, the goods being with the knowledge of the directors received on the premises, and used by them for the purposes of the trade: (*Smith* v. *The Hull Glass Company*, 11 C. B. 897.)

Directors are generally prohibited from being interested in any contract with the Company, unless the same be reported to the next general meeting and approved. A report read at a general meeting and adopted, wherein a resolution was contained respecting an advance of money to the Company by directors, was held to be a sufficient submission to the shareholders of the terms of the advance; but it was also doubted whether a loan of money was such a contract as was contemplated by the prohibition. See *Murray's Case* (5 De Gex, Mac. & G. 746); and in *Stears* v. *The South Essex Gaslight and Coke Company* (3 L. T. Rep. N. S. 472), which was an action for work done for the Company, a plea that plaintiff was a director at the time of the contract made and executed was held to be valid.

The requirement that an incorporated Company shall con-

tract under its common seal, does not extend to all contracts, however trifling, but only to such as are of sufficient importance to put into writing. It may buy and sell, and otherwise deal by parol in the ordinary course of business for purposes necessary to carry on the trade. But in *The London Dock Company* v. *Sinnott* (8 G. & B. 347), an agreement to execute a contract under seal, for surveying the docks for a year, was held not to be of snch a nature as to be sufficient by parol without the seal of the Company.

And a departure from the formalities required by the settlement (or Articles of Association) does not affect the validity of a contract under its common seal: (*Agar* v. *The Athenæum Assurance Company,* 3 C. B. 725.)

A bribe to the directors was held in *Maxwell* v. *Port Tennant Patent Steam Fuel and Coal Company* (24 Beav. 495), to invalidate a contract made with a Company. The plaintiff had agreed to sell a colliery for 8000*l.* in paid-up shares, but by a private arrangement 2500*l.* of these were to be given as a bonus to the directors, and which was not communicated to the shareholders before their approval of the contracts. The court refused specific performance.

Actions by and against Companies.

A Company incorporated under this act may sue and be sued by its corporate name, in respect of any claim by or upon the Company upon or by any person, *whether a member of the Company or not,* so long as any such claim may remain unsatisfied.

Where a Limited Company is plaintiff in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if he has reason to believe that defendant, if successful, may not recover his costs against the assets of the Company, require sufficient security for such costs to be given: (sect. 69.)

In an action against a member for calls, or other moneys due in his character of member, it is not necessary to set forth the special matters, but sufficient to allege that defendant is a member, and indebted to the Company, &c., as the case may be: (sect. 70.)

By sect. 72 Companies are empowered to agree to refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any difference or matter in dispute between themselves and any other Company or person, and all the provisions of that act are to apply to such a reference.

Power to hold Land.

By implication, Trading Companies may hold land without limit, for sect. 21 merely prohibits Companies formed to promote art, science, religion, charity, or other like object, from doing so beyond the extent of two acres, without a licence from the Board of Trade, which is empowered to authorise any such Company to do so, in such quantity and subject to such conditions as it may think fit.

By the former acts *no Companies* were allowed to hold more than two acres of land without a licence from the Board of Trade. But this restriction being removed, there is now no other limit than such as might be imposed by the law of Mortmain.

Conveyance by and to Companies.

The former act provided a short form for mortgage by Companies. This is now omitted, and the only provision relating to deeds is in sect. 55, which empowers a Company by writing under its common seal to appoint a person as its attorney to execute deeds on its behalf, in any place not in the United Kingdom.

Official Examination of the Affairs of a Company.

If members are dissatisfied with the management, and desire an investigation into the affairs of the Company, the Board of Trade may appoint one or more inspectors to examine into the affairs of the Company, and to report thereon, on either of the applications following:—

(1.) In the case of a banking Company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the Company for the time being issued:

(2.) In the case of any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(3.) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Such application is to be supported by such evidence as the Board of Trade may require, that it is *bonâ fide* and not from malicious motives, and the Board may require the applicants to give security for costs: (sect. 57.)

Officers and agents of the Company are to produce to the inspectors all books and documents. The inspectors are empowered to examine upon oath the officers and agents of the Company in relation to the business. When the examination is concluded, the inspectors are to report their opinion to the Board of Trade, and a copy of such report is to be sent by the Board of Trade to the Company's office, and a further copy to the members who had requested the examination. The expenses of and incidental to such examination are to be defrayed by the members upon whose application the inspectors are appointed, unless the Board of Trade shall direct them to be paid out of the assets of the Company: (sect. 59.)

But the Company may, by special resolution, appoint inspectors for the same purpose and with the same powers and duties, only that, instead of making their report to the Board of Trade, they are to report in such manner as the general meeting may direct, and officers and others refusing to produce books or papers, or to answer inquiries, are to be subject to the same penalties. A copy of any such report of inspectors, under the seal of the Company, is to be admissible in any legal proceeding as evidence of the opinions of the inspectors making the report: (sects. 60, 61.)

Legal Proceedings by and against Companies.

Strange to say, the new act omits all provisions for assisting general creditors to the recovery of their debts. It, therefore, remits them to their common law rights.

But these rights are not the same as in the case of partnership, where the judgment creditor may take out execution against any one or more of the partners.

Partnerships regulated under the new act are incorporated, and possess corporate privileges, one of which is, that execution can issue only against the corporate property, and not against individual members of the corporate body. Hence the exclusion from the new law of all the provisions of the old law, which regulated the manner of recovering from a Company after judgment had against it. You cannot now take out execution against a shareholder even for so much of his shares as are unpaid. You can proceed only against the corporate property. Should there be none, your only resort will be to the winding-up clauses of the act. You may cause the Company to be wound-up, indeed; but

you will do so at your own risk, for if the Company is limited and the shares are paid up, the ruinous costs of winding-up will fall upon you. The intolerable injustice of this will be apparent, when it is remembered that, whereas the cost of taking out execution against shareholders, as formerly, would not be more than 5*l.*, the costs of winding-up, which is the only remedy now given to you, might be 500*l.*

The course of proceeding is, therefore, when a judgment has been obtained against a Company,

Either to take out execution against the corporate property; or,

If none be found on which to levy, to apply to the court by petition for an order that the Company be wound-up in pursuance of the provisions of sect. 79.

If a Company is indebted in more than 50*l.*, the creditor may demand payment in writing, and if it be not paid within three weeks or security given for it, the Company may be wound-up: (sect. 80.)

For the practice of winding-up, see *post.*

Offences under the act made punishable by penalties are to be prosecuted—

In England before two or more justices.

In Scotland, before two or more justices or the sheriff of the county.

In Ireland, in the manner directed by 14 & 15 Vict. c. 93 (*the Proceedings before Justices Act*).

The justices or courts imposing any such penalty may direct the whole or any part thereof to be applied to payment of the costs of proceedings, or towards the rewarding of the person on whose information or suit they are recovered. Subject to this, they are to be paid into the Exchequer, and to form part of the Consolidated Fund: (sect. 66.)

Any summons or notice required to be served upon the Company may be served by leaving the same, or sending it through the post addressed to the Company, at their registered office, or by giving it to any director, secretary, or other principal officer of the Company; but notices sent by letter must be posted in such time as to admit of the letter being delivered in the due course of delivery, within the period allowed for giving the notice: (sect. 62.)

It will suffice to prove that such notice was properly directed and posted at such proper time: (sect. 63.)

Any summons, notice, order, or proceeding requiring authentication by a Company may be signed by any director secretary or other authorised officer of the Company, and must not be under the common seal. It may be in writing, or in print, or partly in each: (sect. 64.)

Minutes of all resolutions and proceedings of the general meetings of the Company, and of the directors or managers, are to be duly entered in books, and any such minute, purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, is to be received as evidence in all legal proceedings, and every such meeting is to be deemed to have been duly held as convened until the contrary is proved; all resolutions duly passed, and all appointments of directors or managers, and all acts done by them, are to be valid, although some defects may be afterwards discovered in their appointment or qualifications: (sect. 67.)

The Business of the Company.

The business of a Company is conducted by the officers under the exclusive control of the directors. Individually the directors have no power, they can act only as a Board. For the purpose of the general regulation of the proceedings of the Board, as well as of the affairs of the Company, rules are given by the table, which may be adopted wholly or in part, or others may be substituted. But if the Company does not make regulations of its own, it is to be governed by those contained in the table.

The proceedings of the Board of Directors have been already described.

Besides the periodical meetings of the Board, a general meeting of every Company must be held once at least in every year, and with such forms and for such purposes as in the Articles of Association are prescribed: (sect. 49.)

At such meeting a quorum of members must be present. The quorum should be appointed by the Articles of Association at a small number not to impede business. One-tenth of the members amply suffices.

At the annual general meeting the directors and auditors are elected, the balance-sheet received, the report read, the dividends declared, and remuneration voted to the directors and auditors.

At the annual general meeting every registered shareholder, who has paid all calls, is entitled to be present in

person or by proxy and to vote upon all proceedings. If he appear by proxy, the appointment must be by a written authority, and such proxy will be available only for the particular meeting.

The votes of the shareholders should be determined by the Articles of Association. Every share up to ten should give one vote; and there should be an additional vote for every additional five shares. But no shareholder should be allowed to vote until all calls due from him are paid.

At these meetings proxies are admitted, but the proxy paper should be required to be deposited at the office at least twenty-four hours before the day of meeting.

The chairman of the Board of Directors presides. In his absence, a chairman is elected for the occasion by a show of hands.

It is usual for a book to be placed outside the door of the place of meeting, in which the shareholders, as they enter, are required to write their names, as a security against the admission of persons not entitled to be present.

The notice calling the meeting is first read by the secretary.

The reports of the directors and auditors are then read by the secretary.

The chairman then moves "that the report now read be adopted." Upon this it is open to any of the shareholders present to address the meeting on any of the affairs of the Company, and to ask and receive explanations.

When the discussion is closed, the question is put by the chairman, in the manner already described as to be observed at meetings of the directors, and if there should be a division, the *numbers* on either side are counted, and the result declared. Any member present may require that the names be taken down, and the number of *votes* counted, and that the question may be thus determined.

To prevent the too frequent predominance of a section of the members who are resident near the place of meeting, it is desirable that a poll of the entire Company should be allowed on the demand of a certain number of the members present; that such poll should be appointed not earlier than ten days from the day of the meeting; that a copy of the disputed resolution and notice of the day of polling should be sent to each member by the post, with an intimation that he may vote in person or by proxy, and that the question will be decided by the result of such poll. It would perhaps

be an improvement to adopt the plan of voting papers, permitting the members to vote by signature of a printed copy of the resolution to be sent to them and returned by the post, and which may be thus expressed :—"I vote on the (*affirmative* or *negative*, as the case may be), of the above resolution." The Articles of Association should provide for this.

The directors are next appointed. Their appointment is usually moved and seconded by members, and the like with the auditors.

It is usual to provide that one-third of the directors shall go out of office every year, but to be eligible for re-election. The auditors should be elected annually.

The remuneration to the directors should be voted for the *past* year, and not prospectively. The remuneration of the auditors is, by the regulations, proposed to be appointed at the time of their election.

Should the directors recommend a dividend, the proposition should be put to the meeting and voted. A dividend should not be declared without the consent of a general meeting, even although the regulations should otherwise permit.

Any other matter relating to the affairs of the Company are then submitted and determined, and the meeting usually ends with a vote of thanks to the chairman.

A general meeting may, by special resolution, alter or make new regulations in lieu of, or in addition to, any of the regulations in the Articles of Association or in Table A : (sect. 50.)

Extraordinary general meetings are conducted with the same formalities, with this only difference, that the business is strictly limited to the special matter for which the meeting was called. No other business can be entered upon.

An extraordinary general meeting may be called by the directors at any time. But they may be required to do so by a requisition in writing from any number of members holding one-tenth part of the subscribed capital of the Company. The requisition should state the object of the meeting.

It should be convened within twenty-one days from the requisition being left at the office, and be held within not less than fourteen nor more than twenty-one days from the time of notice given to the members, which notice should be sent in the manner already described. Should the directors

fail to convene it after such a requisition, the requisitionists should by the Articles of Association be empowered to do so.

The same rules as to votes of shareholders, proxies, &c., should be observed at extraordinary as at ordinary general meetings.

A *special resolution* of the Company *must* be passed by a majority of not less than *three-fourths* of the members present in person or by proxy, at a meeting, of which notice, specifying the intention to propose such resolution, has been duly given, and the resolution so made must be confirmed by a *bare* majority of the *members* present in person, or by proxy, at a subsequent meeting, of which notice has been duly given, held at an interval of not less than fourteen days, nor more than one month, from the date of the former meeting. At any such meeting, unless a poll is demanded by five members, a declaration of the chairman that the resolution is carried is to be conclusive evidence of the fact: (sect. 51.)

A printed copy of such resolution is to be sent to the registrar within fifteen days from the confirmation of it, under penalty of two pounds per day by the Company, and the like by any director or manager omitting to send it. A copy of it is to be given to any member on payment of one shilling: (sects. 53 and 54.) It is also to be annexed to the Articles of Association.

It is enacted that, in default of any regulations by the Articles of Association, every member shall have one vote; seven days' notice of a general meeting is to be given to each member in the prescribed manner, five members are to be competent to summon a meeting, and the meeting shall elect its own chairman: (sect. 52.)

Returns to be made by Joint-Stock Companies.

The following returns are required to be made to the registrar:—

The Memorandum of Association: (sect. 17.)

The Articles of Association: (sect. 17.)

Notice of any change of name: (sect. 20.)

An annual list of the members of the Company: (sect. 26.)

Notice of the consolidation or conversion of capital into stock: (sect. 28.)

Notice of any increase in the number of members or nominal capital of the Company: (sect. 34.)

Companies not having their capital divided into shares to send a list of the names, &c., of its directors and managers, and of any change in them: (sect. 45.)

Notice of the situation of the registered office of the Company, and of any change therein: (sect. 40.)

A copy of any special resolution passed by the Company: (sect. 53.)

Order for winding-up: (sect. 88.)

Dissolution of the Company: (sect. 143.)

The balance-sheet is not now required to be registered, nor is any power given to the public or creditors to inspect it. This is an extraordinary oversight, for the principle of limited liability is publicity. How can the public know whether to trust a Company, if ignorant of the state of its affairs?

Liabilities of Members.

These are not very formidable. As already stated, if the shares are paid up in full the liability is practically nothing. In such case the shareholders are exempt even from the cost of winding-up their own business, which is made to fall upon the creditors, the speculators being freed from all evil consequences of their own speculation. Even if the shares are not paid up, the liability is absolutely limited to the amount of the share. This liability is again limited by sect. 38, which declares that no past member shall be liable to contribute to the assets if he has ceased to be a member for a year prior to the commencement of the winding-up; nor in respect of any debt or liability contracted after the time at which he ceased to be a member, nor unless it appears to the court that the existing members are unable to pay.

Then it is expressly declared that no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member: (sect. 38.)

The only just provision in this strange scheme for legalising dishonesty is the seventh part of sect. 38, which enacts that no sum due to a member of a Company, in his character of member, by way of dividends, profits, or otherwise, is to be deemed a debt of the Company payable to such member in competition between himself and any creditor not being a member.

The liabilities of shareholders are now, for the most part, in question, when the Company is being wound-up and the list of contributories comes to be settled. To treat of this question fully would occupy more space than could be conveniently given to it here; but the subject is of comparatively trifling interest now that unlimited Companies have almost ceased to be formed.

Protection of Creditors.

Scant is the protection provided for creditors. The best protection would have been that which the common law gives them—permission to enforce payment from those by whom the debt was contracted; or, if it was desired to limit liability, that might have been effected by limiting the power to contract, or by providing that one-third of the capital shall not be paid up, so as to secure a margin for the payment of the debts of the Company and the costs of its dissolution.

As it is, nothing more is done for the so-called "protection" of creditors than this.

The Company is to have a registered office: (sect. 39.)

Notice of the situation of it is to be registered: (sect. 40.)

Every limited Company is to "paint or affix" its name on the outside of every office or place in which its business is carried on, "in a conspicuous position, in letters easily legible, and engraved upon its seal and mentioned in legible characters in all notices, advertisements, and other official publications, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company" (sect. 41), under a penalty of 5*l.* per day for not affixing the name on the office, and 50*l.* for not inserting the name in a document, and the person signing it is also made personally liable for its amount unless it be duly paid by the Company: (sect. 42.)

The Company is also to keep a register of "all mortgages and charges specifically affecting" its property, entering therein a short description of the property charged, the amount of charge, and the name of the mortgagee, under a penalty of 50*l.* This register is to be open to inspection by any creditor or member of the Company, at all reasonable times: (sect. 43.)

Every limited banking Company, insurance Company, and

deposit, provident, or benefit society, before it commences business, and also on the *first Monday in February* and *the first Monday in August* yearly is to make a statement in the Form D. in the schedule, or as near thereto as circumstances will admit; and a copy of it is to be posted in the principal office and in every branch office or place where the business of the Company is carried on, under a penalty of 5*l.* for every day of default, and every member is to be entitled to a copy of it on payment of sixpence: (sect. 44.)

There is no good reason why this useful provision should not have been extended to all Companies. Unless the public have some means of knowing the precise state of the business of a limited Company, it is impossible for traders to determine if credit can be given to it with safety. With an unlimited Company, the creditor looks to the solvency of the shareholders; with a limited Company, his only reliance is the position of the business. If it were right that the public should have the means of ascertaining this in the case of a bank or an insurance office, it is, at least, equally important that it should be obtainable from other Companies.

Companies not having their capital divided into shares are to keep a register of their directors and managers, and notify every change therein: (sect. 46.)

Some special provisions are made for Companies within the jurisdiction of the Stannaries Court, but for these reference should be made to the statutes.

WINDING-UP. (*a*)

The last stage in the existence of a Company prior to its dissolution is the winding-up, as that process is called, by which the assets of the Company are collected and applied in discharge of its liabilities.

There are three modes of winding-up a Company provided by "The Companies Act, 1862":—

1. Winding-up by the court, or as it is commonly called compulsory winding-up.

(*a*) [*Note.*—Only an outline of the law is aimed at here. It will be found fully set forth in the decisions under the various sections, *post.*—Ed.]

2. Voluntary winding-up, *i.e.* without the intervention of the court.
3. Voluntary winding-up, subject to the supervision of the court.

One feature is common to these three modes, namely, that certain officers called liquidators are appointed to conduct the winding-up, on behalf of all parties interested in it, and are entrusted with ample powers for that purpose.

The points in which these modes of winding-up differ, will at once appear on consulting the act.

In a winding-up by the court, everything must be carried on under the immediate superintendence of the court, acting through the chief clerk of the judge in whose court the winding-up proceeds. Summonses have to be issued, appointments have to be obtained from the judge, questions have to be adjourned for the personal decision of the judge, and the convenience of many different persons has to be suited. The result is great expense and almost endless opportunities for obstruction and delay. These are the evils; the great compensating advantage is the most perfect publicity in all the proceedings. In a voluntary winding-up, on the other hand, the whole business is carried on by the liquidator or liquidators, whose powers under the act are of the most ample description, and who is not under the jurisdiction of the court, unless where a special application is made to the court, to determine any particular question, or to exercise any particular power.

A winding-up under supervision (the mode that has been most approved of) combines certain features of both the other modes. It must be preceded by a resolution to wind-up voluntarily, but it affords greater facilities to all the parties concerned to bring the court into action, and it enables the court to impose any restrictions it pleases on the liquidator.

Which of these three modes of winding-up should be selected in any particular case, depends upon the circumstances of the Company in question. When a Company is being wound-up, for the purpose of reconstituting it, or bringing about an amalgamation with another Company, or for any other reason except that of insolvency, there will probably be little danger of opposing interests coming in conflict in the course of the liquidation, and a voluntary winding-up is likely to be the least expensive and most expeditious.

In the ordinary case of a winding-up in consequence of insolvency, where there are no peculiar circumstances, and where all parties stand upon an equally fair footing, winding-up under supervision will generally be most favoured by the court, and a high authority(*a*) has gone so far as to express an opinion that there should be no compulsory winding-up by the Court of Chancery, except in case of positive fraud. Much, however, is left to the discretion of the liquidator in a winding-up under supervision, the same publicity is not enforced in all the proceedings as in a compulsory winding-up, and complaints have been made that parties interested, whether contributories or creditors, have not the same means of informing themselves of the various steps that are being taken while the winding-up is still in progress, and that they may be saddled with liabilities, or have their rights affected, without getting timely notice and an opportunity of being heard in court.

Although the three modes of winding-up a Company are here treated of separately, a winding-up by the court will alone be gone into in detail, as the others are similar to it in their general scheme of proceeding.

Winding-up by the Court.

What Companies may be wound-up by the Court.

The following Companies and associations may be wound-up by the Court :—

1. All Companies registered under the act, whether formed under it or existing previously to it.(*b*)
2. All Companies formed, and registered under the Joint-Stock Companies Acts, as set forth in Part VI. of the act.(*c*)
3. Industrial and Provident Societies registered under the Industrial and Provident Societies Acts.(*d*)
4. Railway Companies (*e*) abandoned under a warrant of the Board of Trade, in accordance with 13 & 14 Vict. c. 83.(*f*)
5. Any partnership, association, or Company, consisting of

(*a*) See the evidence of Sir W. P. Wood, V.C. (Lord Hatherley), Parliamentary Report (Limited Liability Acts), May 28, 1867, Qu. 1897.

(*b*) Sect. 79, p. 152, *post.* (*c*) See p. 260, *post.* (*d*) See p. 419, *post.*
(*e*) See 32 & 33 Vict. c. 114, s. 4, p. 499, *post.* (*f*) See p. 474, *post.*

more than seven members, and not registered under this act, except railway Companies incorporated by act of Parliament.(*a*)

Where a Company is formed and registered under "The Companies Act of 1862," it is not material as regards its liability to be wound-up, whether the members are resident within the jurisdiction of the court, or whether the objects for which it was constituted are to be carried out within the jurisdiction of our courts, or abroad. These questions, however, would have an important bearing with regard to the utility of a winding-up order, when obtained.

Previously existing Joint-stock Companies (*b*) may register under the act, on complying with certain regulations (see "The Companies Act, 1862," sects. 179, 181) (*c*), and their registration shall not be affected by the fact that it has taken place solely with a view to the Company being wound-up.

An insurance Company registered under the act of 1844 (7 & 8 Vict. c. 110), cannot be wound-up on its own petition, unless it register under "The Companies Act, 1862."(*d*)

Where a Company is illegal in its formation, an objection cannot be taken on that ground in the course of a winding-up. It must be made when the court orders the winding-up, or by way of motion to discharge the winding-up order.(*e*)

It would seem that such a Company may be wound-up at the instance of its creditors, although the court would not lend any assistance to the members of it for that purpose.(*f*)

The Court.

The "court," which has jurisdiction to wind-up a Company or association under "The Companies Act, 1862," is—

1. In the case of a Company engaged in working any mine

(*a*) Sect. 199, p. 271, *post.*

(*b*) As defined by the act, sect. 181, p. 264, *post.*

(*c*) See p. 262, *post.*

(*d*) *Re Waterloo Life, &c., Assurance Company*, 31 Beav. 586; 32 L. J. Ch. 370.

(*e*) *Re Mexican Mining, &c., Company, Ex parte Barclay*, 26 Beav. 177; 27 L. J. Ch. 660.

(*f*) *Re London and Eastern Banking Corporation, Ex parte Longworth's Executors*, Johns. 465; on appeal, 1 De G. F. & J. 17.

within and subject to the jurisdiction of the Stannaries, the court of the vice-warden of the Stannaries,(*a*) unless the vice-warden certifies that, in his opinion, the Company would be more advantageously wound-up in the Court of Chancery, in which case the court is to be the High Court of Chancery.

2. In the case of Companies other than these aforesaid, registered under the act in England, the High Court of Chancery.(*b*)
3. In the case of Companies registered in Ireland, the Court of Chancery in Ireland.(*c*)
4. In the case of Companies registered in Scotland, the Court of Session in either division thereof.(*d*)
5. In the case of societies registered under the Industrial and Provident Societies Act, the County Court of the district in which the office of the society is situated.(*e*)
6. In the case of an unregistered Company, the court which would have jurisdiction, if it were registered in that part of the United Kingdom, where its principal place of business is situated.(*f*)

When the Court of Chancery in England or Ireland has made an order for winding-up a Company, it may direct all subsequent proceedings in the winding-up to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the Company is situate; or, in the case of an unregistered Company, in the place where it has a principal place of business. Thereupon, such Court of Bankruptcy shall become the court for winding-up the Company, and shall have, for the purpose of winding-up the Company, all the powers of the Court of Chancery.(*g*)

The High Court of Chancery in England is also empowered, if it thinks fit, after making an order for winding-up a Company, to direct all subsequent proceedings to be had in a County Court; and, on such direction being given, such County Court shall be "the court" within the meaning of "The Companies Act, 1862," and shall have all the juris-

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(*a*) Sect. 81, p. 157, *post.* (*b*) Ib. (*c*) Ib. (*d*) Ib.
(*e*) See "The Industrial Societies Act, 1862," s. 17, p. 419, *post.*
(*f*) Sect. 199, cl. 1, p. 272, *post.*
(*g*) Sect. 81, p. 157, *post.* See *Re United General Bread, &c., Company, Ex parte Hirtzel*, 2 De G. F. & J. 653; 30 L. J. Ch. 38.

diction and powers of the High Court of Chancery, for the purpose of winding-up the Company.(*a*)

The Court of Chancery may also, on the ground of convenience, transfer the winding-up from the County Court, in which it may be in progress, to any other County Court.(*b*)

When a winding-up has thus been transferred to a County Court, any party, aggrieved by the determination or direction of the County Court judge on any matter, may, under certain conditions, appeal to a vice-chancellor.(*c*)

A Company, whose registered office is within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, may also be wound-up in that court.(*d*)

When a Company may be wound-up by the Court.

By sect. 79 of the act,(*e*) a Company registered under it may be wound-up by the court under the following circumstances:—

1. Whenever the Company has passed a special resolution requiring the Company to be wound-up by the court.
2. Whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.
3. Whenever the members are reduced in number to less than seven.
4. Whenever the Company is unable to pay its debts.
5. Whenever the court is of opinion that it is just and equitable that the Company should be wound-up.

Where a Company is unregistered, it comes under sect. 199, cl. 3, (*f*) and may be wound-up.

1. Whenever the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs.
2. Whenever the Company is unable to pay its debts.
3. Whenever the court is of opinion that it is just and equitable that the Company should be wound-up.

As a creditor of a Company can no longer proceed against

(*a*) See "The Companies Act, 1867," s. 41, p. 398, *post.*
(*b*) Ib. sect. 42. (*c*) Ib. sect. 43.
(*d*) 13 & 14 Vict. c. 43, and 17 & 18 Vict. c. 82. See the General Orders of the Court of Chancery of the County Palatine of Lancaster of February 28, 1866.
(*e*) Page 152, *post.* (*f*) Page 272, *post.*

the individual members of the Company, under the act, he is provided with a summary means of making the Company choose between paying his debt or being wound-up; and a registered Company shall be deemed unable to pay its debts (*a*)—

1. Whenever a creditor by assignment or otherwise, to whom the Company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the Company by leaving the same at their registered office a demand under his hand, requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same, to the reasonable satisfaction of the creditor.
2. Whenever in England and Ireland, execution or other process issued on a judgment decree or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the Company, is returned unsatisfied in whole or in part.
3. Whenever in Scotland, the *inducice* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made.
4. Whenever it is proved to the satisfaction of the court that the Company is unable to pay its debts.

Where the Company is unregistered, it is further provided (*b*) in addition to the foregoing circumstances, that it shall be deemed unable to pay its debts—

1. Whenever any action, suit, or other proceeding, has been instituted against any member of the Company for any debt or demand due, or claimed to be due, from the Company, or from him, in his character of member of the Company; and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the Company, by leaving the same at the principal place of business of the Company, or by delivering it to the secretary, or some director, manager, or principal officer of the Company, or by

(*a*) Sect. 80, p. 155, *post.* (*b*) Sect. 199, cl. 4, p. 272, *post.*

otherwise serving the same in such manner as the court may approve or direct, the Company has not within ten days after service of such notice, paid, secured, or compounded for such debt, or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same.

2. Whenever in the case of an unregistered Company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery, materials, and effects of such mine has been made in a creditor's suit in the court of the vice-warden.

The court, however, will not sanction attempts to enforce, by means of a winding-up petition, payment of a debt, the liability to which is *bona fide* disputed by the Company ;(*a*) in such a case the petition will either be dismissed at once,(*b*) the most probable result in the absence of proof that the Company is insolvent, or the petition will be ordered to stand over until the debt has been established at law.(*c*)

The fifth ground set forth in sect. 79, which permits a Company to be wound-up whenever the court is of opinion that it is just and equitable that it should be wound-up, would appear at first sight to give an unlimited discretion to the court to wind-up a Company whenever it thought fit; this, however, is not so, and it is now beyond question that the words "just and equitable" are to be considered, as referring to matters *ejusdem generis* with the four subject matters stated in the four previous rules.(*d*)

It is not, however, to be supposed that the court is bound to make a winding-up order, even where circumstances are

(*a*) *Re Catholic Publishing and Bookselling Company*, 2 De G. J. & Sm. 116; 33 L. J. Ch. 325, p. 156, *post*.

(*b*) S. C.; *Re London Wharfing and Warehousing Company*, 35 Beav. 37; *Re Brighton Club and Norfolk Hotel Company*, W. N. 1866, p. 362.

(*c*) *Re Rhydydefel Colliery Company*, 3 De G. & J. 80; *Re Universal Bank*, 14 W. R. 906; *Re Inventors' Association*, 2 Dr. & Sm. 553, p. 168, *post*.

(*d*) *Re Agriculturist Cattle Insurance Company, Spackman's case*, 1 Mac. & G. 170; *Re Anglo-Greek Steam Company*, Law Rep. 2 Eq. 1; *Re Suburban Hotel Company*, Law Rep. 2 Ch. App. 737, p. 154, *post*.

proved to exist, under which the court is empowered to make it. The court cannot make an order in the absence of the circumstances set forth in the act, but it is not obliged to make an order where they are proved to exist.(*a*)

A railway Company may now be wound-up by the court, where a warrant has been granted under "The Abandonment of Railways Acts" for the abandonment of the whole railway of any railway company.(*b*)

Proceedings to obtain Winding-up Order.

The first step in a winding-up is an application to the court for a winding-up order. It is made by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of these, and together or separately.(*c*) When the petitioner is a creditor, there will usually be little difficulty about the making of the order, provided his debt is undisputed, or has been established at law, and there is evidence that the Company is unable to pay its debts within the meaning of sect. 80 of the act. In such a case an order to wind-up is almost a matter of right,(*d*) and the court will not in general be influenced by the opposition of the Company or of the contributories. Where, however, it is proved to the court, that there are substantial grounds for believing that a reasonable delay will be beneficial to the Company, by enabling it to supply funds to pay off the petitioner's debt, and that the interests of the other creditors are not likely to suffer thereby, the court will allow the petition to stand over.(*e*)

An order for a compulsory winding-up will not be made, even on a creditor's petition, where it is satisfactorily shown to the court that the great bulk of the creditors are adverse to it, and favour a voluntary winding-up under supervision, which will be decreed accordingly.(*f*) The mere fact, how-

(*a*) See sect. 86 of the act, and *Re Metropolitan Saloon Omnibus Company, Ex parte Hawkins*, 5 Jur. N. S. 922.

(*b*) See "The Abandonment of Railways Act, 1869," s. 4, p. 498, *post.*

(*c*) Sect. 82, p. 158, *post.*

(*d*) See *Bowes* v. *Hope Life Assurance Society*, 11 Ho. Lords Cas. and *Re Consolidated Bank*, W. N. 1866, p. 232, p. 159, *post.*

(*e*) See *Re General Rolling Stock Company*, 34 Beav. 314; and *Re Brighton Hotel Company*, Law Rep. 6 Eq. 339, p. 168, *post.*

(*f*) See *Re Oriental Commercial Bank*, W. N. 1866, p. 312; 15 L. T. N. S. 8, p. 169, *post.*

ever, that the contributories desire a voluntary winding-up, will not weigh with the court as against a creditor's petition for a compulsory winding-up,(*a*) and, even where there are no assets, an order will be made, for the purpose of giving the creditors a voice in managing the business of the Company, which on its insolvency practically belongs to them.(*b*)

Of course a creditor's petition may be supported upon the other grounds mentioned in sect. 79 of the act, as well as upon that of non-payment of his debt.

A contributory's petition stands upon a different footing from that of a creditor's, and the court will generally be reluctant to make a compulsory order upon it, even when it comes within the circumstances set forth in sect. 79 of the act, if it appears that a considerable number of the other contributories consider it unnecessary, or injurious to the general interests of the Company.(*c*) The mere fact that the Company's business is being carried on at a loss, will not induce the court to make an order on a contributory's petition, where the majority of the shareholders are in favour of going on; (*d*) neither will it be considered a sufficient ground, that money and paid-up shares have been given to persons to induce them to become directors of the Company; (*e*) but there may be such a degree of fraud in the constitution of a Company, that the court will take any opportunity that presents itself, of extinguishing the Company as quickly as possible.(*f*)

Where a resolution to wind-up voluntarily has been duly passed, it has been doubted, whether the act gives the court jurisdiction to make an order for a compulsory winding-up, on the petition of a contributory,(*g*) in the absence of any evidence to impeach the resolution. This, however, has not been distinctly decided; and there are cases which seem to go in favour of such a jurisdiction.(*h*)

(*a*) See *Re General Rolling Stock Company*, 34 Beav. 314.

(*b*) See *Re Isle of Wight Ferry Company*, 2 H. & M. 597.

(*c*) See *Re Metropolitan Saloon Omnibus Company*, 5 Jur. N. S. 922.

(*d*) See cases at p. 166, *post*.

(*e*) See *Re Bwlch-y-Plwm Company*, 17 L. T. N. S. 235.

(*f*) See *Re London and County Coal Company*, Law Rep. 3 Eq. 355, p. 171, *post*.

(*g*) See *Re Bank of Gibraltar and Malta*, Law Rep. 1 Ch. App. 69, p. 255, *post*.

(*h*) See *Re Fire Annihilator Company*, 32 Beav. 561; *Re London and Mercantile Discount Company*, Law Rep. 1 Eq. 277; and *Re Imperial*

If the resolution to wind-up voluntarily has been obtained by fraud, or unfair means have been used in passing it, or one or two shareholders have an overwhelming influence which they have used for their own purposes, the court will not be prevented by the resolution from ordering a compulsory winding-up, if it be for the advantage of the Company.(*a*) But the mere fact that a minority of shareholders are averse to a voluntary winding-up will not weigh with the court, and if they are fairly outvoted they must only submit.(*b*)

When a Company consists of a very small number of members, an order to wind it up compulsorily, will not be made on the petition of a contributory, if there is any desire on the part of other contributories to wind-up voluntarily.(*c*)

Where several petitions are presented for winding-up the same Company, and an order is made upon one of them, each of the others will be looked at separately, on its own merits, as if it were the only petition presented; if it disclose a good case for an order, the petitioner will get his costs, otherwise the petition will be dismissed with costs.(*d*) It would seem, however, that a party presenting a petition, after notice that another petition has been presented with the same object as his, will not get his costs,(*e*) unless there are special reasons for the presentation of his petition.

It would be useless repetition to go here into the practice with regard to the intituling, advertising, and service of petitions to wind-up, as it is fully set forth in the General Order of November, 1862 (p. 317, *post*), and the notes under the different rules.

The presentation of the petition is the commencement of

Bank of China, India, and Japan, Law Rep. 1 Ch. App. 339, p. 248, *post*.

(*a*) *Re West Surrey Tanning Company*, Law Rep. 2 Eq. 737, p. 170, *post*.

(*b*) See *Re London Flour Company*, W. N. 1868, p. 84.

(*c*) See *Re Naval, &c., Company*, 1 H. & M. 639; and *Re Sea and River Marine Insurance Company*, Law Rep. 2 Eq. 545; 35 L. J. Ch. 820, p. 165, *post*.

(*d*) See p. 160, *post*; and *Re European Banking Company*, Law Rep. 2 Eq. 521.

(*e*) See *Re Empire Assurance Corporation*, 16 L. T. N. S. 341. Compare with it, however, *Re Commercial Discount Company* (32 Beav. 198), where costs were given in such a case.

the winding-up,(*a*) in case a winding-up is ordered, and at once places the Company under the control of the court. Sect. 114 of the act made it a *lis pendens* within the meaning of 2 & 3 Vict. c. 11, but this section has been repealed.(*b*)

At any time, after the presentation of a petition and before making the winding-up order, the court may grant an injunction, on the application of the Company, or of any creditor or contributory of the Company, to restrain further proceedings in any action, suit, or proceeding against the Company, upon such terms as it think fit;(*c*) it may, also, after the presentation of the petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate of the Company.(*d*) This, however, will not in general be done unless where the petition is unopposed,(*e*) as it might put a stop to the business of the Company, while it was still uncertain whether a winding-up order would be made. When the petition comes on for hearing, the court may dismiss it with, or without costs, may adjourn the hearing conditionally, or unconditionally, may make any interim order, or any other order, that it deems just.(*f*)

Proceedings under Winding-up Order.

An order for winding-up by the court is in the following form,(*g*) "This court doth order that the Company be wound-up by this court under the provisions of 'The Companies Act, 1862.'" It does not in the first instance effect a dissolution of the Company, as was the case under the winding-up acts of 1848 and 1849. Under the present act, the Company is not dissolved until the winding-up is completed, upon which the court makes an order that the Company be dissolved from the date of the order.(*h*)

Where an order is made on a petition, it is provided that it shall operate in favour of all the creditors and all the contributories of the Company, in the same manner as if it

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(*a*) Sect. 84, p. 162, *post*.
(*b*) See p. 206, *post*.
(*c*) Sect. 85, p. 162, *post*.
(*d*) Ib.
(*e*) See *Re London, Hamburg, and Continental Exchange Bank, Emmerson's case*, Law Rep. 2 Eq. 236; and *Re Cilfoden Benefit Building Society*, Law Rep. 3 Ch. App. 462, p. 164, *post*.
(*f*) Sect. 86, p. 164, *post*.
(*g*) See Form 3 in the third schedule to General Order of November, 1862, p. 341, *post*.
(*h*) Sect. 111, p. 205, *post*.

had been made upon the joint petition of a creditor and a contributory.(*a*)

A copy of the order is forthwith to be forwarded to the Registrar of Joint-Stock Companies, who is directed to make a minute of it in his books relating to the Company.(*b*)

After an order has been made for winding-up a Company, no suit, action, or proceeding shall be proceeded with, or commenced against the Company, except with the leave of the court, and subject to such terms as the court may impose.(*c*) The act also provides(*d*) that where a Company is being wound-up by the court, or under the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the Company, after the commencement of the winding-up, shall be void to all intents. But, notwithstanding the positive terms of the latter section, it has been held(*e*) that the court has power, under sect. 87, to allow executions to be proceeded with.

The order must be advertised by the petitioner, within twelve days after the date of it, in the *London Gazette*, and be served upon such persons (if any), and in such manner as the court may direct.(*f*)

A copy of the winding-up order, certified to be a true copy, as passed and entered, must be left by the petitioner at the chambers of the judge (*i.e.*, who has made the order), within ten days after it has been passed and entered, and, in default of his doing so, any other person interested in the winding-up may leave it, and the judge may, if he thinks fit, give the carriage and prosecution of the order to such person.(*g*) Upon such copy being left, a summons to proceed with the winding-up of the Company is to be taken out, and served upon all parties who have appeared upon the hearing of the petition.(*h*) Upon the return of the summons, a time is fixed, if the judge thinks fit, for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in; and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and

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(*a*) Sect. 82, p. 158, *post.* (*b*) Sect. 88, p. 175, *post.*
(*c*) Sect. 87, p. 173, *post.* (*d*) Sect. 163, p. 251, *post.*
(*e*) See *Re London Cotton Company*, Law Rep. 2 Eq. 53; 35 L. J. Ch. 452; and the other cases at p. 252, *post.*
(*f*) See General Order of November, 1862, Rule 6, p. 320, *post.*
(*g*) Rule 7, p. 320, *post.* (*h*) Ib.

the parties to attend thereon.(*a*) The proceedings under the order are to be continued by adjournment, and, when necessary, by further summons; and any such direction may be given, added to, or varied at any subsequent time as may be found necessary.(*b*)

In all matters relating to the winding-up, the court may have regard to the wishes of the creditors or contributories, and may direct meetings of the creditors or contributories to be held, in order that their wishes may be ascertained;(*c*) and winding-up proceedings may be stayed altogether, or for a limited time, on such terms and subject to such conditions as the court deems fit, upon the application to it, by motion, of any creditor or contributory of the Company, and upon satisfactory proof that such proceedings ought to be stayed.(*d*)

The mode in which the proceedings in a winding-up by the court are to be conducted, is pointed out with much minuteness in the General Order and Rules of November, 1862,(*e*) which have been made in accordance with sect. 170 of the act.(*f*) In cases, however, not provided for by rules made under that section, the general practice of the Court of Chancery, including the practice pursued in winding-up Companies before the passing of the act, would apply.(*g*)

After the order has been made, the winding-up is proceeded with in the chambers of the judge who has made it, by his chief clerk, and immediately under his own control.(*h*) In the proceedings in chambers, every party has the unqualified right to have his case heard by the judge personally, if he requires it.(*i*) The act empowers a judge to do in chambers any act which the court is authorised to do.(*k*)

The proceedings before the judge may be attended by every person for the time being on the list of contributories, and by every person having a debt or claim against the Company allowed by the judge.(*l*) Such persons are entitled, upon payment of the costs occasioned thereby, to have

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(*a*) Rule 7, p. 320, *post*. (*b*) Ib.
(*c*) Sect. 91, p. 176, *post*. (*d*) Sect. 89, p. 175, *post*.
(*e*) See p. 317, *post*. (*f*) Page 257, *post*. (*g*) Sect. 170.
(*h*) See *Re Newcastle, Shields, &c., Bank*, 17 Beav. 470.
(*i*) See *Re Agriculturist Cattle Insurance Company*, 3 De G. F. & J. 194, p. 178, *post*.
(*k*) Sect. 83, p. 161, *post*.
(*l*) General Order of November, 1862, Rule 60, p. 335, *post*.

notice of all such proceedings as they shall, by written request, desire to have notice of;(*a*) the party attending, however, must do so at his own expense, and if his attendance on any proceeding occasions any additional costs, which ought not to be borne by the Company, he may be ordered to pay such costs, and be debarred from attending any further proceedings until he has paid the money.(*b*) But no person will be entitled to attend the proceedings until he enters his own and his solicitor's address in a book at the chambers of the judge.(*c*)

The judge may also appoint any one or more of the contributories or creditors to represent before him, at the expense of the Company, all, or any class of, the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any proceeding before him relating to the winding-up, and may remove the person or persons so appointed.(*d*)

Service of summonses, notices, &c., upon contributories and creditors, may be effected (except when personal service is required) by sending them in a prepaid letter through the post, and they are to be considered as served at the time they ought to be delivered, in the due course of delivery, by the post-office, notwithstanding they are returned by the post-office.(*e*)

All the documents relating to the winding-up of a Company are to be filed by the official liquidator, and every contributory, and every creditor whose debt or claim has been allowed, is entitled to inspect such file free of charge, and to take copies and extracts of any documents comprised in it at his own expense.(*f*)

Liquidators.

When the court has taken upon itself the office of winding-up a Company, the next step is the appointment of an official liquidator or official liquidators, as the person or persons are termed whose business it is to conduct the proceedings in winding-up a Company and to assist the court therein.

(*a*) General Order of November, 1862, Rule 60, p. 335, *post.* (*b*) Ib.
(*c*) See Rule 62, p. 336, *post.* (*d*) See Rule 61, p. 336, *post.*
(*e*) See Rules 63 and 64, p. 336, *post.*
(*f*) See Rules 57 and 58, p. 335, *post.* See, also, sect. 156, p. 239, *post.*

The appointment of the official liquidator rests with the court having jurisdiction in the matter,(*a*) and is made by order.(*b*)

In practice the official liquidator of a Company, being wound-up by the Court of Chancery, is appointed by the chief clerk. Where the parties interested, however, are dissatisfied with the chief clerk's selection, they have the right to call upon the judge to consider and determine the appointment himself.(*c*) But when the judge, in the exercise of his discretion, has appointed an official liquidator, the Court of Appeal will not disturb the appointment.(*d*)

Every official liquidator is required to give security, by entering into a recognisance with two or more sureties, in such sums as the judge may approve,(*e*) and he may be called on, from time to time, to give fresh security.(*f*) Immediately after the official liquidator has been appointed, and has given security, his appointment is to be advertised.(*g*) An official liquidator may be removed by the court on due cause shown, and may, of course, resign.(*h*) Any vacancy in the office of an official liquidator, appointed by the court, must be filled by the court; and when a vacancy by death, removal, or resignation occurs, a successor is appointed in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorised by the judge.(*i*)

The official liquidator is allowed such salary or remuneration as the court may direct; it is now regulated by an order which has been issued by the Court of Chancery.(*k*)

The official liquidator may, with the sanction of the court, appoint a solicitor to assist him in the performance of his duties,(*l*) and it behoves him to select one who cannot be suspected of an undue bias towards any of the parties to the winding-up. The duty of the solicitor is to conduct all

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(*a*) See sect. 92, p. 177, *post*; and Rules 8-19, p. 321, *et seq.*

(*b*) See Form 8 in third schedule of General Order of November, 1862, p. 342, *post.*

(*c*) See *Re Agriculturist Cattle Insurance Company*, 3 De G. F. & J. 194, p. 178, *post.*

(*d*) See *Re International Contract Company*, Law Rep. 1 Ch. App. 523; and *Re London, Bombay, and Mediterranean Bank*, Law Rep. 1 Ch. App. 525, p. 178, *post.*

(*e*) See sect. 92, and Rules 10 and 12, p. 321, *post.*

(*f*) See Rule 13, p. 322, *post.* (*g*) See Rule 14, ib.

(*h*) Sect. 93, p. 179, *post.* (*i*) See sect. 93 and Rule 16, p. 322, *post.*

(*k*) See sect. 93 and Rule 18, p. 323, *post.*

(*l*) See sect. 97, p. 184, *post.*

such proceedings as are ordinarily conducted by solicitors of the court.(*a*) The official liquidator must of course keep accounts, and such accounts are to be passed and verified, from time to time, in the same manner as receivers' accounts.(*b*)

Upon the termination of the proceedings in chamber for the winding-up of the Company, the official liquidator is required to bring in a balance sheet of his receipts and payments verified by his affidavit, and pass his final account; the balance due thereon, if any, must then be paid as the court or judge shall direct, and upon this being done, the recognisance entered into by the official liquidator and his sureties may be vacated.(*c*)

All moneys received by the official liquidator are to be paid into the Bank of England immediately after the receipt thereof, and if this is not done within seven days, the official liquidator is subjected to a penalty, and may even have his remuneration disallowed.(*d*) This rule should be strictly observed, and official liquidators are not justified in employing the money of Companies in their hands for the purpose of making profit, even by way of short and well secured loans.(*e*)

It is not necessary that the official liquidators should immediately terminate the business of the Company; they may carry it on as long as may be deemed necessary for the beneficial winding-up of the Company.(*f*) It is a part of their duty to take possession of the Company's books, papers, &c., (*g*) and they are required to make up, confirm, complete, and rectify the books of account of the Company, and to keep such books as may be necessary for showing the debts and credits of the Company, including a ledger containing the separate accounts of the contributories;(*h*) these books of the Company and of the liquidators (as well as all their other accounts and documents) are made by the act *primâ facie* evidence, as between the contributories of the Company, of the truth of all matters purporting to be recorded in them.(*i*)

Although it is the duty of the official liquidator to take

(*a*) See Rule 68, p. 337, *post.*
(*b*) See Rule 19, p. 324, *post.* (*c*) See Rule 65, p. 337, *post.*
(*d*) See Rules 11 and 36, pp. 321 and 329, *post.*
(*e*) See the observations of the Master of the Rolls in W. N. 1866, p. 327.
(*f*) Sect. 95, p. 180, *post.*
(*g*) See sects. 94 and 100, pp. 179 and 197, *post.*
(*h*) See Rule 17, p. 323, *post.* (*i*) See sect. 154, p. 238, *post.*

into his custody, or under his control, all the property, effects, and things in action belonging to the Company,(*a*) yet technically the property of the Company is not vested in him,(*b*) and he brings or defends any action or suit on behalf of the Company, in the name of the Company.(*c*)

The act, however, gives the liquidator ample power to do all acts necessary for the due winding-up of the Company; where more persons than one are appointed to the office of official liquidator, the court is to declare whether any act required or authorised to be done by the official liquidator is to be done by all, or any one or more, of such persons.(*d*)

The things which the official liquidator may do are set forth in sect. 95 of the act;(*e*) these things may be done by him without the sanction or intervention of the court, if the court so provide by any order;(*f*) but if no such order is made, the official liquidator must obtain the sanction of the court on each separate occasion before exercising the powers given by the act. This sanction is obtained by summons and order drawn up thereon, unless the judge otherwise directs, except in the case of bills, &c., and compromises.(*g*)

The act also enables(*h*) the official liquidators, with the sanction of the court, to pay any class of creditors in full, or make such compromise, or other arrangement as they may deem expedient, with creditors, or persons claiming to be creditors.

With regard to contributories, it is provided(*i*) that the liquidators may, with the sanction of the court, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist, between the Company and any contributory, or alleged contributory, or other debtor or person apprehending liability to the Company.

A further power is now given by "The Liquidation Act, 1868,"(*k*) to liquidators in the case of any winding-up, the proceedings in which were pending on the 31st of July, 1868, to file a scheme disposing of the assets of the estate in liquidation, in any way that will be for its benefit.

(*a*) See sects. 94 and 100.
(*b*) See, however, sect. 203, p. 278, *post*, as to unregistered Companies.
(*c*) See sect. 95, p. 180, *post*.
(*d*) See sect. 92, p. 177, *post*.
(*e*) See p. 180, *post*.
(*f*) See sect. 96, p. 184, *post*.
(*g*) See Rules 48, 49, 50, p. 332, *post*.
(*h*) See sect. 159, p. 244, *post*.
(*i*) See sect. 160, p. 245, *post*.
(*k*) See 31 & 32 Vict. c. 68, p. 440, *post*.

Proof of Debts.

One of the first objects aimed at in a winding-up is the ascertainment of the debts and liabilities of the Company, and the court is empowered, by sect. 107,(*a*) to fix a certain day or certain days on or within which the creditors of the Company must prove their debts or claims, or be excluded from the benefit of any distribution made before such debts are proved.

For the purpose of ascertaining the debts and claims due from the Company, and of requiring the creditors to come in and prove their debts or claims, an advertisement is to be issued at such time as the judge may direct, fixing a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any), to the official liquidator, and appointing a day for adjudicating thereon.(*b*)

The creditors, having sent in the required particulars, need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidators; but if such notice is given they are to come in and prove their debts or claims, within the time specified in the notice.(*c*)

When the claims are sent in, the liquidator investigates them, and ascertains, as far as he can, which of them are justly due from the Company.(*d*) He then makes out a list of all the debts and claims sent in to him, distinguishing those which in his opinion are justly due and proper to be allowed, without further evidence, either wholly or in part, and separating them from those which, in his opinion, ought to be proved by the creditors.(*e*) This list the official liquidator must leave at the chambers of the judge,(*f*) and before the time appointed for adjudication he must make and file an affidavit, setting forth and stating his belief, with the reasons for such belief, that such debts and claims are justly due and proper to be allowed.(*g*)

When the time comes for adjudicating upon the debts and claims, it rests with the judge either to allow them upon the affidavit of the official liquidator, or to require all or any of them to be proved by the claimant, and to adjourn the

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(*a*) See p. 204, *post.* (*b*) See Rule 20, p. 324, *post.*
(*c*) See Rule 21, p. 325, *post.* (*d*) See Rule 22, p. 325, *post.*
(*e*) Ib. (*f*) Ib. (*g*) Ib.

adjudication thereon to a time to be then fixed.(*a*) The official liquidator then gives notice to the creditors, whose debts or claims have been allowed, of such allowance.(*b*)

Notice is also to be given to those creditors whose debts or claims have not been allowed, that they are required to come in and to prove them by a day to be therein named, being not less than four days after the notice, and to attend at a time to be therein named, being the time appointed for the adjudication.(*c*)

Sect. 158 of the act(*d*) sets forth the debts and claims that are admissible to proof in a winding-up, and it need only be observed here, that the debts and claims provable must be debts and claims alleged to be due by the Company itself that is being wound-up, as the Company is not answerable for the liabilities of its promoters, directors, members, or other persons, and demands against such persons cannot be proved against the Company, either as debts or claims. When expenses have been incurred previously to a Company's incorporation, they can only be allowed against it when express provision is made in the articles for their payment.(*e*)

List of Contributories.

As soon as may be after making the winding-up order, the court proceeds to settle a list of contributories;(*f*) that is, a list of the persons who are liable to contribute to the assets of the Company in the winding-up.(*g*) For this purpose the official liquidator, with all convenient speed after his appointment, makes out and leaves at the chambers of the judge a list of the contributories.(*h*) The list, in the first instance, is prepared from the register of shareholders (the entry in which is one of the elements of membership) and other materials, at the command of the official liquidator.

Those contributories, who were shareholders when the winding-up commenced, are placed in one class, called List A.; while those who had ceased to be shareholders at the commencement of the windiug-up, but were shareholders at

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(*a*) See Rule 23, p. 325, *post*.
(*b*) See Rule 23, p. 325, *post*. (*c*) See Rule 24, p. 325, *post*.
(*d*) See p. 240, *post*, and Rules 25-28, p. 326, *post*.
(*e*) As to expenses incurred and contracts entered into before the incorporation of a Company, see pp. 3 and 15, *post*.
(*f*) Sect. 98, p. 185, *post*. (*g*) See sect. 74, p. 147, *post*.
(*h*) As to the duties of the official liquidator with regard to the list of contributories, see Rules 29, 30, and 31, p. 326, *post*.

some time within twelve months before, form a separate class, called List B.(*a*)

Where the Company, being wound-up, is unregistered, those persons are to be deemed contributories who are liable at law or in equity to pay, or contribute to the payment of, any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the Company.(*b*)

In case of the death of a contributory, either before or after he has been placed on the list, his personal representatives, heirs, and devisees are liable, in a due course of administration, to contribute to the assets of the Company, in discharge of the deceased contributory's liability, and are deemed to be contributories accordingly.(*c*) In like manner, the assignees of a contributory who has become bankrupt are to be deemed to represent such bankrupt for the purposes of the winding-up;(*d*) and it is allowed to prove against his estate the estimated value of his liability to future calls, as well as calls already made.(*e*)

Where a female contributory marries, either before or after she has been placed on the list, her husband is, during the continuance of the marriage, liable to contribute to the same amount that she would have been liable for, if she had not married; and he is deemed a contributory accordingly.(*f*)

The court, when it comes to settle the list, is not bound by the actual condition in which the register was when the winding-up commenced, but has power to rectify the register by putting names on, or removing them from it, as the justice of the case may require.(*g*) In settling the list, the court distinguishes between those who are contributories in their own right and those who are so as representative of, or being liable to, the debts of others; unless the court thinks fit to have it so, it is not necessary, where the personal representative of a deceased contributory is placed on the list, to add the heirs or devisees of such contributory.(*h*)

Every person placed on the list as a contributory has a

(*a*) See sect. 38, p. 116, *post*, and the notes under it.
(*b*) Sect. 200, p. 276, *post*.
(*c*) See sect. 76, p. 150, *post*.
(*d*) See sect. 77, p. 151, *post*.
(*e*) See sect. 75, p. 148, *post*.
(*f*) See sect. 78, p. 151, *post*.
(*g*) See sect. 98, p. 185, *post*.
(*h*) See sect. 99, p. 197, *post*.

right to attend at the settlement of it;(*a*) and whoever desires to have his name omitted from, or inserted in the list, must apply to the court by motion under the winding-up, although he have substantive proceedings for the purpose pending.(*b*)

The result of the settlement of the list is stated in a certificate by the chief clerk;(*c*) and an order made settling a person on, or removing him from the list, may be appealed from in the same manner as any other order or decision made or given in a winding-up.(*d*)

Any contributory, for the time being settled on the list, may be ordered by the court to deliver to the official liquidator any property of the Company which happens to be in his hands for the time being, and to which the Company is *prima facie* entitled.(*e*)

The court has also power to order payment of any money due from a contributory, or from the estate of the person he represents, exclusive of moneys due by way of calls made, or to be made (*f*) in the winding-up.

There is also a provision empowering the court, either before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that a contributory (including, of course, an alleged contributory) is about to abscond, or to remove or conceal any of his property, to cause such contributory to be arrested and his property to be seized.(*g*)

When the list of contributories is settled, the mode of making the persons settled on it contribute to the assets of the Company, is by calls made by the court. For this purpose it is provided that the court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories to the extent of their liability, for such sums as it

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(*a*) See Rule 60, p. 335, *post*.

(*b*) See p. 186, *post*, as to applications to vary the list of contributories. See, also, *Breckenridge's case* (*Re Scottish Universal Finance Bank*, 2 H. & M. 642), p. 114, *post*.

(*c*) See Rules 31 and 56, pp. 327 and 334, *post*.

(*d*) See sect. 124, p. 212, *post*. (*e*) See sect. 100, p. 197, *post*.

(*f*) See sect. 101, p. 198, *post*, which section see also with regard to a contributory's right of set-off.

(*g*) See sect. 118, p. 210, *post*.

deems necessary to satisfy the debts and liabilities of the Company, and the costs of winding-up, and for the adjustment of the rights of the contributories amongst themselves, and in making a call it may take into consideration the probability that some of the contributories may partly or wholly fail to pay.(*a*)

The act gives the court full discretion as to the time of making a call, and the amount of it, and the Court of Appeal will be very slow to interfere with such discretion, as it is exercised by the judge in the winding-up.(*b*)

The statements made by the official liquidator will generally be allowed to guide the judge in the making of calls.(*c*)

An application to the judge to make a call is by summons, stating the proposed amount of the call.(*d*) Such summons must be served "four clear days at the least" before the day appointed for making the call, on every contributory proposed to be included in it; or if the judge so directs, notice of the intended call may be given by advertisement.(*e*)

When an order for a call has been made, a copy of it must be served upon each of the contributories included in it, together with a notice from the official liquidator, specifying the amount due from him in respect of such call.(*f*)

If the contributory fail to pay the call, by the day appointed for payment, another order may be made, requiring payment, within four days after service of the order, of the sum required to be paid by the former order and notice.(*g*) If an order for payment by a contributory be not complied with, the ordinary jurisdiction of the Court of Chancery may be used to enforce it.(*h*)

The liability of a person to contribute to the assets of a

(*a*) See sect. 102, and the notes on it, p. 200, *post*.

(*b*) See the judgments in *Re Contract Corporation*, Law Rep. 2 Ch. App. 95, p. 200, *post*.

(*c*) Ib. (*d*) See Rule 33, p. 328, *post*. (*e*) Ib.

(*f*) See Rule 34, p. 328, *post*. Rules 63 and 64 (p. 336, *post*) provide for the mode of service. As to service and affidavit of service under the repealed acts, see *Ellis's case* (3 De G. & Sm. 172), *Ex parte D'Urban* (18 Jur. 781), *Re Nantle Vale Slate Company* (27 Beav. 32; 7 W. R. 319), and *Ex parte De Beauvoir* (32 L. J. Ch. 453).

(*g*) See Rule 35, p. 329, *post*.

(*h*) See sect. 120, p. 211, *post*, and *Re United General Bread, &c., Company, Hirtzel's case* (30 L. J. Ch. 38), as to committing for disobedience. See, also, *Re North of England Banking Company, Manver's case* (4 De G. & Sm. 349), where it was held that a writ of *ne exeat regno* might be issued in proceedings under the Winding-up Acts.

Company creates a specialty debt, payable when the calls are made in the winding-up.(*a*)

Where a person made a contributory, as personal representative of a deceased contributory, makes default in paying the sum ordered to be paid by him, proceedings may be taken for administering the personal or real estate, or both, of such deceased contributory, and for compelling payment thereout of the money due.(*b*)

The claims against contributories may be compromised by the official liquidator on such terms as may be agreed upon, but the sanction of the court is necessary in order to make such an arrangement binding.(*c*)

Where a person settled on the list of contributories seeks to resist payment of a call on the ground that he is not a contributory, he may apply to the court to stay the proceedings for enforcing the call, while an application to have his name removed from the list is pending; he must first, however, lodge in court the amount of the call.(*d*)

One of the duties of the court on a winding-up is to adjust the rights of contributories amongst themselves, and distribute any surplus that may remain among the parties entitled thereto;(*e*) and the court may make calls for the adjustments of such rights.(*f*)

In the case of the winding-up of a limited Company, the holders of paid-up shares are entitled to have calls made on the holders of shares not fully paid up, in order to enforce their contributions to the assets of the Company.(*g*)

It may be observed here that, when all the creditors have been paid off, any moneys due on any account whatever to a contributory from the Company, may be allowed to him by way of set-off against any subsequent call or calls.(*h*)

(*a*) See sect. 75, p. 148, *post*. (*b*) See sect. 105, p. 203, *post*.

(*c*) See sect. 160, p 245, *post*.

(*d*) See *Re Overend, Gurney, and Company, Ex parte Oakes and Peeke* (W. N. 1866, p. 361), and *Re Peninsular, West Indian, and Southern Bank, Jopps' case* (W. N. 1867, p. 192), p. 201, *post*.

(*e*) See sect. 109, p. 205, *post*. Sect. 92 of "The Winding-up Act, 1848" (11 & 12 Vict. c. 45), corresponded with this; under it was decided the case of *Re Irish Consols Mining Company, Ex parte Perrier* (7 Ir. Ch. Rep. 256), where a contributory was made liable for the full amount of nominally paid-up shares obtained by him, and transferred to other parties in a fraudulent manner.

(*f*) See sect. 102, p. 200, *post*.

(*g*) *Re Anglesea Colliery Company* (Law Rep. 1 Ch. App. 555), and *Re Crookharen Mining Company* (Law Rep. 3 Eq. 69).

(*h*) See sect. 101, p. 198, *post*.

Termination of Winding-up.

As soon as the affairs of the Company are fully wound-up, it is provided(*a*) that the court shall make an order, dissolving the Company as from the date of the order, and that the Company shall be from that time dissolved. The official liquidator is required to report the order to the registrar, who is to make a minute of it in his books.(*b*) When the Company is about to be dissolved, its books may be disposed of in such manner as the court may direct;(*c*) the file of proceedings on the winding-up and the book containing the official liquidator's account are to be deposited in the Record and Writ Clerks' Office.(*d*)

Voluntary Winding-up.

Companies registered under one of the former Joint-Stock Companies Acts may be wound-up voluntarily, as well as Companies registered under the Act of 1862; (*e*) and also all societies registered under "The Industrial and Provident Societies Act, 1867."(*f*) No unregistered Company can, however, be wound-up voluntarily under the act.(*g*)

A Company under the act may be wound-up voluntarily(*h*)—

1. Whenever the period, if any fixed for the duration of the Company by the Articles of Association, expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound-up voluntarily;
2. Whenever the Company has passed a special resolution requiring the Company to be wound-up voluntarily;
3. Whenever the Company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same.

(*a*) Sect. 111, p. 205, *post*; and see Rule 66, p. 337, *post*. A form of the order is given (No. 56), p. 368, *post*.
(*b*) See sect. 112, p. 206, *post*. (*c*) See sect. 155, p. 238, *post*.
(*d*) Rule 67, p. 337, *post*. (*e*) See note (*a*), p. 217, *post*.
(*f*) See p. 419, *post*. (*g*) See sect. 199, cl. 2, p. 272, *post*.
(*h*) Sect. 129, p. 217, *post*.

The manner in which the resolution, whether special or extraordinary, should be passed, is pointed out by the act,(*a*) and if the directions contained in it are not complied with, the resolution will be invalid.

It is provided by the act(*b*) that notice must be given by advertisement, of the passing of a special or extraordinary resolution to wind-up voluntarily. The winding-up commences at the time of the passing of the resolution;(*c*) where there is a preliminary and a confirmatory resolution, the commencement of the winding-up dates from the passing of the second resolution.(*d*) Although the Company is not dissolved until the winding-up is completed,(*e*) yet after its commencement it must cease to carry on business, except so far as may be required for a beneficial winding-up.(*f*) It is also provided that after the resolution to wind-up is passed, no transfers of shares shall be valid, except such as are made to, or with the sanction of, the liquidators, and that no alteration shall take place in the status of the members.(*g*)

The Company, in general meeting, has the right to appoint one or more liquidators to conduct the winding-up,(*h*) and is empowered to fill up, in a similar manner, any vacancy in the office of the liquidator or liquidators so appointed.(*i*) A Company may also, by an extraordinary resolution, delegate the power of appointing liquidators, or any of them, to its creditors or any committee of them.(*k*) If from any cause there is no liquidator acting in a voluntary winding-up, the court may appoint one or more on the application of a contributory.(*l*) The court may also, on due cause shown, remove any liquidator and appoint another in his place.(*m*) Upon the appointment of liquidators, all the powers of the directors cease, except in so far as the Company in general meeting or the liquidators sanction the continuance of such powers.(*n*)

If one liquidator only is appointed, all the provisions of

(*a*) See p. 217, *et seq.*
(*b*) See sect. 132, p. 220. (*c*) Sect. 130, p. 218, *post.*
(*d*) See *Re China Steam Ship Company, Dawes' case*, Law Rep. 6 Eq 232, p. 219, *post.*
(*e*) See sect. 143, p. 229, *post.* (*f*) See seet. 131, p. 219, *post.*
(*g*) See ib. and the cases there referred to.
(*h*) Sect. 133, cl. 2 and 3. See the cases referred to in the note.
(*i*) Sect. 140, p. 228, *post.* (*k*) Sect. 135, p. 225, *post.*
(*l*) Sect. 141, p. 228, *post.* (*m*) Ib.
(*n*) Sect. 133, cl. 5, p. 221, *post.*

the act in reference to several liquidators shall apply to him,(*a*) and when several liquidators are appointed, all powers may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two.(*b*)

It is the duty of the liquidators—

1. To apply the property of the Company in satisfaction of its liabilities *pari passu*, and subject thereto to distribute it amongst the members according to their rights and interests in the Company, unless it be otherwise provided by the regulations of the Company ;(*c*)
2. To pay the debts of the Company, and adjust the rights of the contributories amongst themselves ;(*d*)
3. As soon as the affairs of the Company are fully wound-up, to make up an account showing the manner in which such winding-up has been conducted, and the Company's property disposed of ;(*e*)
4. To call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators ;(*f*)
5. To make a return to the Registrar of Joint Stock Companies of such a meeting having been held ;(*g*)
6. In the event of the winding-up continuing for more than one year, to summon a general meeting of the Company at the end of the first year, and of each succeeding year from the commencement of the winding-up, and to lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.(*h*)

The act empowers the liquidators—

1. To exercise without the sanction of the court all powers given by the act to the official liquidator ;(*i*)
2. To exercise the powers given by the act to the court of settling the list of contributories ;(*k*)

(*a*) Sect. 133, cl. 4, p. 221, *post.*
(*b*) Sect. 133, cl. 6.
(*c*) Sect. 133, cl. 1, p. 220, *post.*
(*d*) Sect. 133, cl. 10, p. 222, *post.*
(*e*) Sect. 142, p. 229, *post.*
(*f*) Sect. 142, p. 229, *post.*
(*g*) Sect. 143, p. 229, *post.*
(*h*) Sect. 139, p. 228, *post.*
(*i*) Sect. 133, cl. 7.
(*k*) Sect. 133, cl. 8.

3. To make calls on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability ;(*a*)
4. To apply to the court to determine any question arising in the matter of the winding-up, or to exercise all or any of the powers which the court might exercise if the Company were being wound-up by the court ;(*b*)
5. To summon general meetings of the Company for any purposes they may think fit ;(*c*)
6. With the sanction of an extraordinary resolution of the Company, to make such compromise or other arrangement as they may deem expedient with creditors or any person having any claim against the Company,(*d*) and also to compromise all debts owing to the Company by, or claims made by the Company on, any contributory or other debtor or person apprehending liability to the Company ;(*e*)
7. With the sanction of a special resolution, to transfer or sell to another Company the whole or a portion of the business of the Company in consideration of shares, policies, or other like interests for the purpose of distribution among the members, or enter into any other arrangements, whereby the members may participate in the profits of, or receive any other benefit from, the purchasing Company ;(*f*)
8. In cases of winding-up that come within "The Liquidation Act, 1868," to divide any part of the assets of the Company in specie, or otherwise dispose of them without sale ;(*g*)

Lastly. With the previous sanction of the court, to prosecute any director, manager, officer, or member of the Company, who has been guilty of any offence in relation to the Company for which he is criminally responsible.(*h*)

It is of course within the powers of the liquidators to sell or contract for the sale of the assets of the Company,(*i*) and should objections be raised in any particular case, the court

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(*a*) Sect. 133, cl. 9.
(*b*) Sect. 138, p. 226, *post*.
(*c*) Sect. 139, p. 228, *post*.
(*d*) Sect. 159, p. 244, *post*.
(*e*) Sect. 160, p. 245, *post*.
(*f*) Sect. 161, p. 246, *post*.
(*g*) See p. 440, *post*.
(*h*) Sect. 168, p. 256, *post*.
(*i*) See sect. 133.

will sanction the transaction on being applied to,(*a*) and on its appearing that the course taken is the proper one. With regard to the power given to liquidators to dispose of the business of the Company in liquidation to another Company, the decisions on the subject will be found under the section by which the power is given.(*b*)

The voluntary winding-up of a Company will not be allowed to prejudice the rights of creditors, and if the court is of opinion that it will have that effect, a compulsory winding-up may be ordered;(*c*) and, notwithstanding the voluntary winding-up of a Company, a creditor may sue it and issue execution against it; on application, however, made to the court, it has the power of restraining him from doing either.(*d*)

With regard to settling the list of contributories, the liquidators may exercise the powers given by the act to the court,(*e*) and they may make calls on the contributories at any time, and for any sum, to the extent of their liability.(*f*) In order, however, to enforce the calls, they must either proceed by an action at law in the name of the Company,(*g*) or apply to the court for an order.(*h*)

The proof of debts or claims against the Company is regulated by the same section(*i*) as that which applies to the case of a winding-up by the court; but the liquidators are not empowered to fix a time after which creditors not proving will be excluded.(*k*)

The act provides that all the costs and expenses, properly incurred in the winding-up, are payable out of the assets of the Company in priority to all other claims;(*l*) and the like priority is given to expenses incurred in prosecuting delinquent directors, &c.(*m*)

(*a*) Under sect. 138, p. 226, *post*. See *Re Scinde, Punjaub, and Delhi Bank Corporation*, W. N. 1867, p. 41, and *Re Colonial and General Gas Company*, Ib. p. 42.

(*b*) See p. 246. *post*. (*c*) Sect. 145, p. 230, *post*.

(*d*) Under sect. 138. See p. 227, *post*.

(*e*) Sect. 133, cl. 8. As to a contributory's right to see that the list has been rightly settled, see *Re London Bank of Scotland, Collum's case*, W. N. 1867, p. 114.

(*f*) Sect. 133, cl. 9.

(*g*) See *Brighton Arcade Company* v. *Dowling*, Law Rep. 3 C. P. 175; 37 L. J C. P. 125.

(*h*) Under sect. 138, p. 226, *post*. (*i*) Sect. 158, p. 240, *post*.

(*k*) As by sect. 107, p. 204, *post*, the court may do in a compulsory winding-up.

(*l*) Sect. 144, p. 230, *post*. (*m*) Sect. 168, p. 256, *post*.

Winding-up subject to the Supervision of the Court.

There now only remains to be considered a winding-up subject to the supervision of the court. An order for this purpose can only be obtained, where a resolution has already been passed for winding-up a Company voluntarily. The effect of the order is to continue the voluntary liquidation subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally upon such terms, and subject to such conditions as the court thinks just.(*a*)

The application for such an order must be made by petition; with regard to which, the same rules must be observed as are laid down in the case of a petition for winding-up by the court.(*b*)

In determining whether the Company is to be wound-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up, the court is empowered to have regard to the wishes of the creditors and contributories, and may direct meetings to be summoned for the purpose of ascertaining their wishes.(*c*)

The circumstances by which the court is guided, as to making or refusing an order, will be found in the cases hereafter referred to.(*d*)

A petition for continuing a voluntary winding-up subject to supervision, is for the purpose of giving jurisdiction to the court over suits and actions, to be deemed a petition for winding-up the Company by the court;(*e*) and in cases of fraudulent preference shall be deemed to correspond with the act of bankruptcy in the case of an individual trader.(*f*)

When the supervision order is made, it shall, for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order for winding-up by the court, and shall confer full authority on the court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if a compulsory order had been made.(*g*)

(*a*) Sect. 147, p. 231, *post*.
(*b*) See General Order of November, 1862, p. 317, *post*.
(*c*) Sect. 149, p. 232, *post*.
(*d*) See pp. 169, 231, *post*. See, also, *Re London and Mediterranean Bank*, W. N. 1866, pp. 207, 317; and *Re Inns of Court Hotel Company*, W. N. 1866, p. 348.
(*e*) Sect. 148, p. 232, *post*. (*f*) Sect. 164, p. 253, *post*.
(*g*) Sect. 151, p. 234, *post*.

A winding-up under supervision is deemed to commence from the date of the resolution to wind-up voluntarily, and, where there are two resolutions, from the date of the second, or confirmatory one.(*a*)

The liquidators (if any) appointed by the Company in the voluntary winding-up continue to act, and, unless restricted by the court, may exercise all their powers without the sanction or intervention of the court, as if the Company were being wound-up altogether voluntarily.(*b*)

If the contributories have not exercised their right of appointing liquidators before the supervision order is made, they cannot do so afterwards.(*c*) The court will then exercise its power (*d*) of appointing any liquidator or liquidators it thinks fit.

Where a liquidator or liquidators have been already appointed by the Company, the court may, in the supervision order, or any subsequent order, appoint any additional liquidator or liquidators;(*e*) such liquidators will in all respects stand in the same position as if they had been appointed by the Company;(*f*) but the court may, from time to time, remove them, or fill up vacancies in their number.(*g*)

In the case of liquidators appointed by the Company, the court has the power of removing them only on due cause shown, which the court would probably hold to exist only in the case of misconduct on the part of the liquidators.(*h*)

Where a supervision order has been superseded by a compulsory order, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.(*i*)

(*a*) See *Re Smith, Knight, and Company, Weston's case*, Law Rep. 4 Ch. App. 20, p. 231, *post.*

(*b*) Sect. 151, p. 234, *post.*

(*c*) See *Re London Quays and Warehouses Company*, Law Rep. 3 Ch. App. 394, p. 233, *post.*

(*d*) Sect. 150, p. 234, *post.* (*e*) Ib. (*f*) Ib. (*g*) Ib.

(*h*) Sect. 141, p. 228, *post.* See, also, *Re London and Mediterranean Bank*, W. N. 1866, p. 317; and *Re United Merthyr Collieries Company*, W. N. 1867, p. 99.

(*i*) Sect. 152, p. 235, *post.*

THE COMPANIES ACTS.

THE COMPANIES ACTS.

THE COMPANIES ACT, 1862

(25 & 26 Vict. cap. 89).

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.—[*7th August* 1862.]

Whereas it is expedient that the laws relating to the incorporation, regulation, and winding-up of trading Companies and other associations should be consolidated and amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. *Short title.*—This act (*a*) may be cited for all purposes as "The Companies Act, 1862."

(*a*) *This act.*]—See sect. 2 of "The Companies Act, 1867," *post.*

2. *Commencement of act.*—This act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately, shall not come into operation until the second day of November one thousand eight hundred and sixty-two, and the time at which it so comes into operation is hereinafter referred to as the commencement of this act.

3. *Definition of insurance Company.*—For the purposes of this act a Company that carries on the business of insurance (*b*) in common with any other business or businesses shall be deemed to be an insurance Company.

(*b*) *A Company that carries on the business of insurance, &c.*]—See *The London Monetary Advance and Life Assurance Company* v. *Smith*, 3 H. & N. 543; 27 L. J. Ex. 479.

4. *Prohibition of partnerships exceeding certain number.*—No Company, association, or partnership consisting of more than ten persons shall be formed, after the commencement of this act,(*a*) for the purpose of carrying on the business of banking,(*b*) unless it is registered as a Company under this act, or is formed in pursuance of some other act of Parliament, or of letters patent; and no Company, association, or partnership consisting of more than twenty persons(*c*) shall be formed,(*d*) after the commencement of this act, for the purpose of carrying on any other business that has for its object the acquisition of gain(*e*) by the Company, association, or partnership, or by the individual members thereof, unless it is registered as a Company nnder this act, or is formed in pursuance of some other act of Parliament, or of letters patent, or is a Company engaged in working mines within and subject to the jurisdiction of the Stannaries.

(*a*) *After the commencement of this act.*]—This act, therefore, extends to—

1. Banking Companies having more than ten partners.
2. Other Companies having more than twenty partners.

And it excepts—

1. Companies formed in pursuance of some other act of Parliament.
2. Companies formed by letters patent.
3. Mining Companies within the jurisdiction of the Stannaries.

(*b*) *For the purpose of carrying on the business of banking.*]—See *Re District Savings Bank, Ex parte Coe*, 10 W. R. 138.

(*c*) *No Company, &c., consisting of more than twenty persons.*]—Where forty-five persons formed a partnership and hired land for the partnership purposes without registering under this act, it was held that this was an illegal association under this section, and consequently that the several members did not acquire the franchise as occupying tenants within sect. 27 of the Reform Act, 2 Will. 4, c. 45: (*Harris* v. *Amery*, Law Rep. 1 C. P. 148.)

(*d*) *Shall be formed, &c.*]—Until the Company is registered, persons incurring liabilities on its behalf will be personally answerable for them. As to its liabilities after registration, see sect. 18 of this act.

(*e*) *The acquisition of gain.*]—See sect. 23 of "The Companies Act, 1867," *post*, for special provisions as to associations formed for purposes not of gain.

5. *Division of act.*—This act is divided into nine parts, relating to the following subject matters:

The First Part,—to the constitution and incorporation of Companies and associations under this act:

The Second Part,—to the distribution of the capital and liability of members of Companies and associations under this act:

The Third Part,—to the management and administration of Companies and associations under this act:
The Fourth Part,—to the winding-up of Companies and associations under this act:
The Fifth Part,—to the Registration Office:
The Sixth Part,—to application of this act to Companies registered under the Joint-Stock Companies Acts:
The Seventh Part,—to Companies authorised to register under this act:
The Eighth Part,—to application of this act to unregistered Companies:
The Ninth Part,—to repeal of acts, and temporary provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

MEMORANDUM OF ASSOCIATION.

6. *Mode of forming Company.*—Any seven or more persons(*a*) associated for any lawful purpose(*b*) may, by subscribing their names(*c*) to a Memorandum of Association,(*d*) and otherwise complying with the requisitions of this act in respect of registration, form an incorporated Company,(*e*) with or without limited liability.(*f*)

(*a*) *Seven or more persons.*]—See sect. 48, *infra*, as to the liabilities incurred by carrying on business with less than seven persons.

(*b*) *Associated for any lawful purpose.*]—A Company, when registered, is not answerable for the liabilities or engagements of its promoters, unless they are recognised and embodied in the Articles of Association, or acquiesced in or adopted by the Company after registration.

When this is not the case, the promoters are personally liable, and each is answerable for his own acts, and for the acts of the other promoters so far as he has authorised such acts to be done on his credit.

As to the personal liability of promoters, see *Kelner* v. *Baxter*, Law Rep. 2 C. P. 174; *Scott* v. *Lord Ebury*, *Ib.* 255.

Where E. W. P., the secretary of a Company not yet registered, gave an order signed "E. W. P., secretary *pro tem.*," for advertising the prospectus of the Company in a newspaper, it was held, on the authority of *Pitchford* v. *Davis* (5 M. & W. 2), that, as the Company was non-existent till registered, the secretary was personally liable for the expenses of advertising: (*Hopcroft* v. *Parker*, 16 L. T. N. S. 123. Smith, J.)

P., the defendant, was associated with one W. and others in the for-

mation of a Company. At a meeting of the projectors, of which the defendant was chairman, a resolution was passed that the prospectus then read and marked with the initials of the defendant be approved and printed for private circulation; and at a subsequent meeting, of which also the defendant was chairman, a further resolution was passed "that the prospectus as altered and marked with the chairman's initials, be approved as the prospectus of the Company, and that the same be printed for circulation and advertised at the discretion of W. as early as possible." W. employed the plaintiffs to print the prospectus, showing them the initialed copy, and telling them that he was authorised by the defendant to get it printed. The prospectus when printed was delivered at the office of the Company, and was adopted and circulated by the defendant. There was an arrangement, not communicated to the plaintiffs, between the defendant and W. that all expenses of forming the Company, down to the allotment of shares, were to be borne by W. It was held that there was evidence from which the jury might infer that W. had authority to pledge the defendant's credit for the printing: (*Riley* v. *Packington*, Law Rep. 2 C. P. 536; 36 L. J. 204, C. P.; 16 L. T. N. S. 382.)

A prospectus of a projected Company for the conveyance of emigrants to British Columbia contained statements calculated to induce intending emigrants to believe that arrangements had been perfected for the object in view, and inviting them to take tickets for their passage, and the public to purchase shares. This prospectus was shown by the secretary to the defendants, and they were asked to allow their names to be inserted therein as directors; to which they consented, on being qualified (that is, presented each with 200 paid-up shares of the nominal value of 10*l.* each) and indemnified. Their names were accordingly inserted, and the prospectus published and advertised in the *Times*. It was held, in an action for breach of contract, that from these facts the jury were warranted in inferring that one who contracted with the secretary for a passage, and paid his money, upon the faith of the representations contained in the prospectus, did so upon the credit of the defendants, and consequently that he was entitled to sue them for a breach of such contract: (*Collingwood* v. *Berkeley*, 15 C. B. N. S. 145.)

In another case, the defendant authorised his name to be inserted as a director in the prospectus of a Company. The prospectus was sent to the defendant, who suggested alterations in it. The secretary gave orders to the plaintiff to advertise the prospectus, which was done at an expense of 236*l.* The Company was never registered. It was held, in an action by the plaintiff against the defendant, to recover the expenses of the advertisements, that the defendant, by consenting to act as a director, had not authorised the secretary of the Company to pledge his credit, and that he was not liable to the plaintiff: (*Burbidge* v. *Morris*, 34 L. J. 131, Ex.; 12 L. T. N. S. 426.) See also *Maddick* v. *Marshall*, 17 C. B. N. S. 829, in error; 10 Jur. N. S. 1201; 11 L. T. N. S. 611.

For an action by one promoter of a Company against the others to make them contribute their share of the amount of a judgment recovered against him for expenses relating to the formation of a Company, see *Boulter* v. *Peplow*, 9 C. B. 493.

One of the promoters of a Company cannot maintain a suit in equity against his fellow promoters for contribution towards expenses incurred by him in promoting the Company, unless he is willing that an account should be taken of the expenses incurred by all the promoters: (*Denton* v. *Macneil*, Law Rep. 2 Eq. 352.)

Prospectus of a Company.

The first step in the formation of a Company is usually the publication of a prospectus by its promoters, inviting the public generally to join the proposed undertaking, and setting forth the objects of the Company, the number and value of the shares proposed to be issued, and the amount of capital it is intended to start with.

Sect. 38 of "The Companies Act, 1867," now requires that a prospectus should specify the dates of, and the names of parties to, any contract made prior to the issue of the prospectus.

If this prospectus contains false statements of fact, or conceals material facts; or if the obligations that would be incurred under it are substantially different from those incurred under the Memorandum of Association (*Downes* v. *Ship*, Law Rep. 3 H. L. 343, per Lord Cranworth), any one taking shares on the faith of the prospectus is entitled to avoid his contract on discovering the deception. On this subject, Lord Chelmsford has expressed himself as follows: "Although, in its introduction to the public, some high colouring, and even exaggeration in the description of the advantages which are likely to be enjoyed by the subscribers to an undertaking, may be expected, yet no misstatement or concealment of any material fact or circumstances ought to be permitted. In my opinion, the public who are invited by a prospectus to join in any new adventure ought to have the same opportunity of judging of everything which has a material bearing on its true character as the promoters themselves possess: (*The Directors, &c., of the Central Railway Company of Venezuela* v. *Kisch*, Law Rep. 2 H. L. 113.)

For cases where shareholders sought to repudiate their contracts on the above grounds, see notes under sects. 23, 35, and 98, *infra*.

It has been held, however, that a person who before the registration of a Company applies for shares on the faith of a prospectus should be treated as having become aware of any variances between the prospectus and the Memorandum at the earliest practicable period; and if the Memorandum and Articles of Association are in existence when he applies for shares, that he ought to be held bound to look to them before he makes his application: (*Re Barned's Banking Company, Peel's case*, Law Rep. 2 Ch. App. 674, *post*.)

Recovery of Deposit, &c., on the Project proving abortive.

When the project of forming a Company proves abortive, the shareholders may, subject to the terms of their contract, maintain a suit in equity for an account of the application of the money subscribed, and for repayment of the whole or part of the money they have paid; the suit may be maintained not only when there has been fraud (see *Colt* v. *Wollaston*, 2 P. W. 154, and *Blain* v. *Agar*, 1 Sim. 37 and 2 *Ib.* 289), but also where there has been no fraud: (see *Harvey* v. *Collett*, 15 Sim. 332.)

The promoters of a Company issued a prospectus stating that deposits would be returned if no allotment of shares was made. Several deposits were made, but no allotment ever took place. It was held that this statement did not bind moneys, consisting mainly of these deposits, standing in a bank to the credit of the Company, with a trust or lien in favour of the depositors, as against creditors of the Company; and demurrer was allowed to a bill by depositors seeking to restrain creditors from attaching the moneys under a garnishee order. A bill may be filed

by depositors upon applications for shares in an abortive Company, in which no allotment of shares has been made, on behalf of themselves and all the other depositors: (*Moseley* v. *Cressey's Company*, Law Rep. 1 Eq. 405; 12 Jur. N. S. 46; 14 L. T. N. S. 99.)

Where a plaintiff, having been struck off the register of a Company by an order of the court on the ground of excess in the objects of the Company (as shown by the Memorandum registered after he became a member over those stated in a prospectus on the faith of which he took shares), filed a bill for the return of his deposit money against the directors who issued the prospectus, and the Company, not alleging fraudulent intention, a demurrer by the Company was allowed on the ground that the money in their hands was not impressed with a trust; and a demurrer by the directors was allowed on the ground that mere excess of authority by an agent does not constitute equitable fraud, and that any relief in such case must be at law: (*Stewart* v. *Austin*, Law Rep. 3 Eq. 299; 36 L. J. 162, Ch.; 15 L. T. N. S. 407.)

Action to recover Deposit.

To sustain an action for money had and received, against a person named as a director of a projected Company by a proposed subscriber, for his deposit, two things must be shown; first, that the money so paid came to the defendant's hand or power for the purpose of being applied to the objects of the projected Company; and, secondly, that the project failed by reason of no Company, or no Company conformable to the prospectus, having been formed: (*Hayes* v. *Stirling*, 14 Ir. Com. Law R. 277.)

B. applied for shares in the C. Company on the faith of a prospectus which stated (*inter alia*) that a certain portion of the capital had been already subscribed, the greater portion of this being the paid-up shares given to the promoters. There were other alleged misrepresentations. In an action to recover back the moneys paid for the shares, it was held that the questions for the jury were—first, whether the statements in the prospectus were false in fact? Secondly, whether defendants knew them to be false, or issued them in honest belief of their truth? Thirdly, whether plaintiff was wholly or in any material degree influenced by those statements: (*Moore* v. *Burke*, 15 L. T. N. S. 118, Q. B. Cockburn, C.J.)

(*c*) *By subscribing their names.*]—By sect. 23 of this act, the subscribers to the Memorandum of Association shall be deemed to have agreed to become members of the Company, and of course incur all the liabilities of members.

The Memorandum should be subscribed in presence of and attested by one witness at least. See Form A. in the second schedule to this act.

The Subscribers to the Memorandum competent to act as Directors.

The subscribers to the Memorandum of Association are competent to act as first directors, and it seems that acts done by them unanimously are not vitiated by the fact of no meeting being held to sanction them: (*Hallows* v. *Fernie*, Law Rep. 3 Eq. 520.)

A Company was incorporated under this act; the Memorandum of Association being signed by seven shareholders: no deed of association was filed, and no other shares were allotted; A. entered into an agreement to act as foreman of the "Company's" works, which was signed by B. and

C., two of the persons signing the Memorandum of Association, as "chairman," and "managing director," respectively. In an action by A. against the Company for work done under the agreement, it was held that, in the absence of evidence to the contrary, the jury were justified in presuming that B. and C. had authority to bind the Company: (*Totterdell* v. *The Fareham Blue Brick and Tile Company*, Law Rep. 1 C. P. 674; 12 Jur. N. S. 901.)

(*d*) *Memorandum of Association.*]—A form is given in the second schedule to this act, Form A., *post.*

(*e*) *Form an incorporated Company.*]—The Company is not formed until after registration (under sect. 17) takes place. After registration, however, the registrar's certificate (under sect. 18) is conclusive evidence that all previous requisites in respect of registration have been complied with (*Re Barned's Banking Company, Peel's case*, Law Rep. 2 Ch. App. 674); and even the subscription of the Memorandum of Association by seven persons, as required by this section, cannot then be questioned: (*Oakes* v. *Turquand and Harding, Re Overend, Gurney, and Co.*, Law Rep. 2 H. L. 325.)

(*f*) *With or without limited liability.*]—Unless the Company is expressly stated to be "limited," the liability of its members will be unlimited.

7. *Mode of limiting liability of members.*]—The liability of the members of a Company formed under this act (*a*) may, according to the Memorandum of Association, be limited either to the amount, if any, unpaid on the shares respectively held by them, (*b*) or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the Company in the event of its being wound-up.

(*a*) *Formed under this act.*]—A limited Company may now be formed in which the liability of the directors, managers, or managing director may be unlimited: (see sect. 4 of "The Companies Act, 1867," *post.*)

(*b*) *The amount, if any, unpaid on the shares, &c.*]—Where the liability is thus limited, and the shares are fully paid up, all liability on the part of the holders ceases, and creditors have no remedy except against the effects or property, if any there be, of the Company.

8. *Memorandum of Association of a Company limited by shares.*]—Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the Memorandum of Association shall contain the following things: (*a*) (that is to say,)

(1.) The name of the proposed Company, with the addition of the word "limited" as the last word in such name:

(2.) The part of the United Kingdom, whether England,

Scotland, or Ireland, in which the registered office of the Company is proposed to be situate:

(3.) The objects for which the proposed Company is to be established: (*b*)

(4.) A declaration that the liability of the members is limited:

(5.) The amount of capital (*c*) with which the Company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

(1.) That no subscriber shall take less than one share:

(2.) That each subscriber of the Memorandum of Association shall write opposite to his name the number of shares he takes. (*d*)

(*a*) *The Memorandum of Association shall contain the following things.*]—"The Memorandum of Association is the charter and limit of the powers of the Company, just as the Articles of Association may be said to be its rules of internal government:" (per Lord Cairns, L.J., *Re Cachar Company, Lawrence's case*, Law Rep. 2 Ch. App. 424.)

Where the Memorandum of Association empowered the directors, without further authority from the shareholders, to pay a specified sum for the costs and expenses of the promoters, it was held by the Court of Chancery on demurrer that a payment without taxation was not improper: (*Croskey* v. *The Bank of Wales*, 4 Giff. 314; 8 L. T. N. S. 301; 9 Jur. N. S. 595.)

(*b*) *The objects for which the proposed Company is to be established.*]—These should be clearly and fully stated, as the powers of the Company entirely depend on them. Where a prospectus of a Company is issued before the Company is registered, anyone applying for shares in the Company, on the faith of the prospectus, may repudiate these shares on the registration of the Company, if he find the Memorandum of Association to differ materially from such prospectus (see *Re Russian (Vyksounsky) Iron Works Company, Stewart's case*, Law Rep. 1 Ch. App. 574, *post*. See also *Re Cachar Company, Lawrence's case, Re Russian &c., Company, Kincaid's case*, Law Rep. 2 Ch. App. 412, *post; The Directors, &c., of Central Railway Company of Venezuela* v. *Kisch*, Law Rep. 2 H. L. 99); but a mere difference in the language of the prospectus and the memorandum would not relieve him from his liability. The question would be whether the obligations incurred under the two documents were substantially different: (*Downes* v. *Ship*, Law Rep. 3 H. L. 343.)

The Objects stated in the Memorandum must be adhered to.

The funds of a Company established for the purposes of one undertaking cannot be applied to another, and the attempt so to apply them, though sanctioned by all the directors and by a large majority of the shareholders, is illegal. But where a Company was established "for the erection, furnishing, and maintenance of an hotel, the carrying on the usual business of an hotel and tavern therein, and the doing all such things as are incidental or otherwise conducive to the attainment

of the above objects;" and the directors, while the hotel was in the course of being built, agreed to let off, for a stipulated period of short duration, a large portion of it to the head of a Government department for the business of his office, and evidence was given that such a letting was calculated to be productive of advantage to the Company in its intended business, and that a majority of shareholders had sanctioned the act, it was held that the arrangement was valid within the words of the clause, "all such things as are incidental, or otherwise conducive to the attainment" of the objects for which the Company was established: (*Simpson* v. *Westminster Palace Hotel Company*, 8 Ho. Lords Cas. 712.) See *The Australian Steam Company* v. *Mounsey*, 4 Kay & J. 733.

See also *Featherstonhaugh* v. *Lee Moor Porcelain Clay Company* (Law Rep. 1 Eq. 318), where it was held that a majority of two-thirds of the shareholders in general meeting were empowered under certain clauses, in their deed of settlement, to authorise the directors to make a valid mining lease for twenty-one years of the whole of the works and buildings of the Company.

Compare with the last two cases the case of *Re London and Colonial Company, Horsey's claim* (Law Rep. 5 Eq. 561), and see note under it for remarks of Wood, V.C., on *Simpson* v. *Westminster Palace Hotel Company*. See also his judgment in the *Joint-Stock Discount Company* v. *Brown*, Law Rep. 3 Eq. 151.

The objects of the Company are to be taken into account when the question is whether the Company can issue a negotiable instrument under sect. 47, *infra*: (see *Bateman* v. *Mid-Wales Railway Company*, Law Rep 1 C. P. 499; *Balfour* v. *Ernest*, 28 L. J. 170, C. P.; 5 Jur. N. S. 439; 32 L. T. 295.)

A Company was formed under this act for the purpose of purchasing a concession from a foreign Government for the construction of a railway and forming a *société anonyme* to make the railway. The Memorandum stated that in order to attain their main object the Company might do, in England, or Peru, or elsewhere, whatever they thought incidental or conducive thereto. The Articles gave the directors power to do all things, and make all contracts which, in their judgment, were necessary and proper for the purpose of carrying into effect the object mentioned in the Memorandum. It was decided in the court below that bills of exchange accepted in manner prescribed by sect. 47 of this act were binding on the Company, for that every Company constituted under this act has power to issue bills of exchange: but it was held, on appeal, that this act does not confer on all Companies registered under it a power of issuing negotiable instruments; but that such a power exists only where, upon a fair construction of the Memorandum and Articles of Association, it appears that it was intended to be conferred. It was held, however, that such a power existed in the present case; for that although it could not be inferred from the nature of the business of the Company, it was conferred by the above general words in the Memorandum and Articles: (*Peruvian Railways Company* v. *The Thames and Mersey Marine Insurance Company; Re Peruvian Railways Company*, Law Rep. 2 Ch. App. 617.) See also *Re Blakely Ordnance Company, Ex parte Mercantile and Exchange Bank*, W. N. 1867, p. 147.

Abandonment of Objects.

The Court of Chancery will not restrain a Company from doing a thing within the scope of its objects, on the ground that, if the Com-

pany does that thing, the doing of it may incapacitate the Company from performing something else, which is also within the scope of its objects: (*Syers* v. *The Brighton Brewery Company*, 11 L. T. N. S. 560, Ch.)

And it is not an abandonment of the objects of a Company if, where, being established for three or four purposes, it abandons one and carries on the others, provided such abandonment does not alter the fundamental principle of the Company: (*The Norwegian Titanic Iron Company*, 35 Beav. 223.)

And where a Company is formed for working a patented machine, it is not *ultra vires* to purchase the patent: (*Re British and Foreign Cork Company, Leifchild's case*, Law Rep. 1 Eq. 231; 11 Jur. N. S. 941; 13 L. T. N. S. 267.)

(*c*) *The amount of capital.*]—Preference shares have been declared illegal where no power to issue them has been given by the Memorandum or Articles of Association, and it seems that the issue of such shares when opposed to the Memorandum of Association, constituting the basis of the Company, cannot be rendered legal by any exercise of the power conferred by sect. 55 of this act to alter the regulations contained in the Articles of Association: (*Hutton* v. *The Scarborough Cliff Hotel Company, Limited*, 34 L. J. N. S. 643; 11 Jur. N. S. 551, Ch., on appeal.) See also *Moss* v. *Syers*, 32 L. J. 711, Ch., *post*.

(*d*) *The number of shares he takes.*]—As to the consequences of so subscribing the Memorandum of Association, see sect. 23, *infra*, and the decisions upon it, especially *Re South Blackpool Hotel Company, Migott's case* (Law Rep. 4 Eq. 238; 36 L. J. 531, Ch.; 16 L. T. N. S. 271), *Re London, Hamburg, and Continental Exchange Bank, Evans's case* (Law Rep. 2 Ch. App. 427; 36 L. J. 501, Ch.; 16 L. T. N. S. 252), and *Re London and County Coal Company, Bennett's case* (16 L. T. N. S. 475, Ch.)

As to signing the Memorandum of Association for paid-up shares when it makes a distinction between shares generally and paid-up shares, and when no such distinction is made, see *Re South of France Company, Baron de Beville's case*, Law Rep. 7 Eq. 11, *post*.

9. *Memorandum of Association of a Company limited by guarantee.*—Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound-up, hereinafter referred to as a Company limited by guarantee, the Memorandum of Association shall contain the following things; (that is to say,)

(1.) The name of the proposed Company, with the addition of the word "limited" as the last word in such name:

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate:

(3.) The objects for which the proposed Company is to be established:

(4.) A declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

10. *Memorandum of Association of an unlimited Company.*—Where a Company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited Company, the Memorandum of Association shall contain the following things; (that is to say,)

(1.) The name of the proposed Company:

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate:

(3.) The objects for which the proposed Company is to be established.

11. *Stamp, signature, and effect of Memorandum of Association.*—The Memorandum of Association shall bear the same stamp as if it were a deed,(*a*) and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: it shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the Memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such Memorandum, subject to the provisions of this act.

(*a*) *The same stamp as if it were a deed.*]—The deed stamp is 1*l.* 15*s.*, where there are less than thirty folios; where there are thirty folios or upwards, the duty is 1*l.* 15*s.* for the first fifteen folios, and a further progressive duty of 10*s.* for every fifteen folios over and above that number.

12. *Power of certain Companies to alter Memorandum of Association.*—Any Company limited by shares may so far modify the conditions contained in its Memorandum of Association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned,(*a*) as to increase its capital(*b*) by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount(*c*) than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any Company in the conditions(*d*) contained in its Memorandum of Association(*e*).

(*a*) *As altered by special resolution in manner hereinafter mentioned.*]—Sect. 50 of this act provides for altering the regulations contained in the Articles of Association.

(*b*) *To increase its capital, &c.*—By sect. 9 of "The Companies Act, 1867," *post*, a Company has now power, under certain conditions, to reduce its capital also.

(*c*) *Shares of larger amount, &c.*]—Before "The Companies Act, 1867," a Company had no power to subdivide its shares into others of smaller amount (see *Re Financial Corporation, Ex parte Holmes and others*, Law Rep. 2 Ch. App. 714), but the power to do so is now given by sect. 21 of that act: (see *post.*)

(*d*) *No alteration shall be made by any Company in the conditions, &c.*]—See sect. 8 of "The Companies Act, 1867," as to making the liability of directors unlimited.

(*e*) *Memorandum of Association.*—As to power of altering or departing from conditions contained in the Memorandum of Association, see *Hutton* v. *The Scarborough Cliff Hotel Company*, 11 Jur. N. S. 551, Ch., on appeal; 12 L. T. N. S. 228, 229; 34 L. J. N. S. 643, *post.*

13. *Power of Companies to change name.*]—Any Company under this act, with the sanction of a special resolution of the Company(*a*) passed in manner hereinafter mentioned, and with the approval of the Board of Trade, testified in writing, under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register(*b*) in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new

name that might have been continued or commenced against the Company by its former name.

(*a*) *A special resolution of the Company.*]—For the manner of passing a special resolution, see sects. 51 and 52, *infra*.

(*b*) *The registrar shall enter the new name on the register, &c.*]—The change of name is not complete until it has been made on the register, and a certificate of incorporation, altered to meet the circumstances of the case, has been issued by the registrar. Until that certificate has been obtained the corporation does not exist by its new name, but is considered as still existing under its original name.

On the 18th of July, 1867, a Company duly passed a resolution to change its name, which resolution was confirmed on the 9th of August. On the 23rd of August the directors made a call in the old name of the Company. On the 7th of September the approval of the change of name by the Board of Trade was obtained, and on the 13th notice of the call in the new name was given to the shareholders. On the 31st of December, 1867, an action in the old name was brought against a shareholder, who knew of the proposed change of name, to recover the amount of the call. The certificate of incorporation in the new name was not issued until the 13th of February, 1868. It was held that the action was properly brought in the old name of the Company, and that the notice of call in the new name was sufficient, as it, in fact, gave the defendant notice that the call had been made: (*Shackleford, Ford and Co.* v. *Dangerfield, Ib.* v. *Owen*, Law Rep. 3 C. P. 407.)

ARTICLES OF ASSOCIATION.

14. *Regulations to be prescribed by Articles of Association.*—The Memorandum of Association may, in the case of a Company, limited by shares,(*a*) and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by Articles of Association signed by the subscribers to the Memorandum of Association, and prescribing such regulations for the Company as the subscribers to the Memorandum of Association deem expedient:(*b*) The articles shall be expressed in separate paragraphs, numbered arithmetically: They may adopt all or any of the provisions contained in the table marked A. in the first schedule hereto: They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered; and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least,

and shall write opposite to his name in the Memorandum of Association the number of shares he takes.

(*a*) *A Company limited by shares.*]—The promoters of a Company limited by shares may proceed in any one of three ways:

1. By a simple Memorandum of Association, without any Articles of Association annexed, in which case the Company will be governed by the regulations in Table A.
2. By accompanying the Memorandum of Association with Articles of Association, adding to or altering the regulations in Table A.
3. By accompanying the Memorandum of Association with Articles of Association expressly and in terms excluding the regulations in Table A., but embodying such of them as may be desired, altering some and adding others, so that the Company may be wholly governed by the Articles of Association, without any further reference to the regulations in Table A.

(*b*) *Such regulations for the Company, &c.*]—Power to alter the regulations contained in the Articles of Association or in Table A., where such table is applicable, is given by sect. 50, *infra*.

The Articles of Association may be said to be the Companies' rules of internal government: (*Re Cachar Company, Lawrence's case*, Law Rep. 2 Ch. App. 424.)

The shareholders are bound by what the Articles contain, and it is therefore their interest to make themselves acquainted with the Memorandum and the Articles as speedily as possible.

Shareholders bound to know Contents of Articles.

In the case of *Barned's Bank, Ex parte Peel* (Law Rep. 2 Ch. App. 684), Cairns, L. J. expressed himself as follows:—"It is the bounden duty of a person to ascertain, at the earliest practicable moment, what is the charter or title deed under which the Company in which he has agreed to become a shareholder is carrying on business. I think he ought to be held bound to look to the Memorandum and Articles of Association before he applies for shares. But even when the Memorandum and Articles of Association are not in existence at the time, I think, at the very latest, when he receives his allotment of shares, he ought to satisfy himself that there is nothing in the Memorandum or Articles of Association to which he desires to make any objection."

See also *Oakes* v. *Turquand, Re Overend, Gurney and Co.* (Law Rep. 2 H. L. 352), where Chelmsford, L.C. expressed his approval of these views of Lord Cairns.

As the Master of the Rolls said in a case where shareholders sought to impute misconduct to the directors and manager of a Company, "Every shareholder is bound to know the Articles of Association, and he cannot complain of anything disclosed by them, which, if he does not know, he might know, and ought to know;" and, further added, alluding to large remuneration to the projector and directors provided for by the Articles of Association, "this is all fair and open, and if the public subscribe to Companies conducted by persons receiving this remuneration they cannot afterwards complain": (*Re Anglo-Greek Steam Navigation Company*, Law Rep. 2 Eq. 1; 35 Beav. 399.)

See also *Re Peninsular, West Indian, and Southern Bank, Dixon's case*, (W. N. 1867, p. 53), as to subscribers to a Company being affected with notice of what appears in the Articles.

The case *Re General Exchange Bank* (W. N. 1868, p. 193) exemplifies this phase of the responsibility of shareholders, as also the consequences of their ratifying or acquiescing in agreements that might be originally invalid.

The Public bound to notice Contents of Articles.

Persons dealing with a Company whose regulations are registered, are bound to take notice of them as well as of the provisions of the act under which the Company is constituted. Lord Wensleydale, speaking of a Company registered under 7 & 8 Vict. c. 110, said, "If they do not choose to acquaint themselves with the power of the directors it is their own fault; and if they give credit to any unauthorised persons, they must he content to look to them only and not the Company at large. The stipulations of the deed which restrict and regulate their authority, are obligatory on those who deal with the Company; and the directors can make no contract so as to bind the whole Company of shareholders, for whose protection the rules are made unless they are strictly complied with. The contract binds the person making it, but no one else:" (*Ernest* v. *Nicholls*, 6 Ho. Lords Cas. 419.)

See also *Agar* v. *Athenæum Life Insurance Society*, 3 C. B. N. S. 725; *London Dock Company* v. *Sinnott*, 8 E. & B. 347; and *Balfour* v. *Ernest*, 5 C. B. N. S. 601.

But where in any transaction the powers of a Company as shown by its Articles are not exceeded, and the requirements of the Company's regulations have *primâ facie* been complied with, the cases go to show that parties dealing with the Company are not bound to see that these powers are exercised with strict regularity, or that all formalities and conditions are complied with, "into which, if it were necessary to make such inquiry, it would be impossible for the Company to carry on the business for which it was formed": (see *The Royal British Bank* v. *Turquand*, 5 El. & Bl. 248, and 6 *Ib.* 327; 25 L. J. Q. B. 317; 2 Jur. N. S. 663; *Clarke* v. *The Imperial Gas Light and Coke Company*, 4 B. & Ad. 315; *Hill* v. *The Manchester and Salford Waterworks Company*, 5 B. & Ad. 866; *Smith* v. *Hull Glass Company*, 11 C. B. 897; *The Prince of Wales Assurance Society* v. *The Athenæum Insurance Society*, 3 C. B. N. S. 756, note. But see *Darcy* v. *The Tamar, Kit Hill, and Collington Railway Company*, Law Rep. 2 Ex. 158. In equity, see *Ex parte the Eagle Company*, 4 Kay & J. 549; *The Anglo-Australian Life Insurance Company* v. *The British Provident Fire and Life Assurance Society*, 3 Giff. 521; varied on appeal, 8 Jur. N. S. 628.)

Where, however, a person is aware that directors or agents are acting irregularly in a transaction with him, he cannot hold the Company bound: (*Balfour* v. *Ernest*, 5 C. B. N. S. 601.)

Contracts contained in Articles.

A Company is not bound by an agreement entered into before registration unless such agreement is expressly made binding by the Articles: (see *Pilbrow* v. *Pilbrow's Atmospheric Railway Company*, 5 C. B. 440; *Parsons* v. *Spooner*, 5 Ha. 102; *Wilkins* v. *Roebuck*, 4 Drew. 281; *Hopkinson's case*, 7 De G. M. & G. 193; *Terrel* v. *Hutton*, 4 Ho. Lords Cas. 1091; *Gunn* v. *London and Lancashire Fire Insurance Company*, 12 C. B. N. S. 694.)

When an agreement is contained in the Articles, all persons entering the Company are bound by it; but when an agreement is so

stated the whole of it should be substantially set forth, and there ought to be no reservation or sub-agreement which is concealed from the public.

The Articles of Association of a banking Company, with a nominal capital of 1,200,000*l.*, in 60,000 shares, of which the prospectus stated that the first issue would be 30,000, empowered the directors to commence business as soon as they thought fit, notwithstanding the whole capital might not have been subscribed for; and provided that upon the first allotment of shares 10,000*l.* should be paid to the promoters. Six weeks after the formation of the Company, 5319 shares only having been subscribed for, of which 800 were subscribed for by four directors, the directors allotted the shares, and paid 5000*l.* to the promoters, of which 2000*l.* was, in pursuance of an agreement made before the formation of the Company, but not noticed in the Articles of Association, applied in paying the deposits on the 800 shares of the four directors: it was held, that the concealment of the agreement between the promoters and the four directors released the shareholders from their contract with the promoters contained in the Articles, and also that, in making the allotment of shares, the directors could not, under the circumstances, be considered to have exercised their discretion *bonâ fide;* and on these grounds a claim by the promoters in the winding-up of the Company for the balance of the 10,000*l.* was disallowed: (*Re Madrid Bank, Ex parte Williams*, Law Rep. 2 Eq. 216; 35 L. J. 474, Ch.; 14 L. T. N. S. 456.)

See also *Re General Exchange Bank, Preston's case* (W. N. 1868, p. 193; 16 W. R. Ch. 1097), *post*, as to a partial concealment of an agreement from shareholders.

The Articles of Association of a Company authorised the directors to confirm and adopt any contracts previously entered into on behalf of the Company, and also provided that the office of director should be vacated by a director being concerned in, or participating in, the profit of any contract with the Company. A projector of the Company, who was also one of the original directors, entered as the attorney of his son, into an agreement to sell to the Company an estate in accordance with terms of agreement made previously to the incorporation of the Company. On the winding-up of the Company he claimed the balance of the purchase-money of the estate. It turned out that he was himself beneficial owner of it, a fact known, as he alleged, to all the directors, but unknown to a large number of the shareholders until the winding-up. It was held, that the judgment could not be enforced. If it was understood that the director was beneficially interested in the contract, it would have been valid; but here many of the shareholders knew nothing of it; and a contract between a Company and a director could not stand when questioned by those who had no notice of the true position of the director: (*Re Central Darjeeling Tea Company, Ex parte Cornish*, W. N. 1867, p. 147.)

As to directors claiming, under Articles of Association, remuneration for their services, see *Orton* v. *The Cleveland Firebrick and Pottery Company*, 11 Jur. N. S. 531, Ex.; and *The English and Irish Bank* v. *Gray*, 15 Ir. Com. Law R. 538.

Directors.

When the Articles of Association do not prescribe the number of directors required to constitute a quorum, the number who usually act in conducting the business of the Company will constitute a quorum; and a forfeiture of shares by two out of six directors has been held

valid: (*Re Tavistock Ironworks Company, Lyster's case*, Law Rep. 4 Eq. 233.) But, where the deed of settlement of a Company provided that the directors should allot shares not subscribed for in such manner as they should deem best, and three directors were to form a quorum, it was held that a delegation of the power to two of their number aud the manager was invalid: (*Re Leeds Banking Company, Howard's case*, 36 L. J. N. S. 42, Ch.; Law Rep. 1 Ch. App. 561.) But see *Totterdell* v. *Fareham Brick Company* (Law Rep. 1 C. P. 674), *post*.

See also *Re Regent's Canal Iron Company* (W. N. 1867, p. 79) as to directors executing deeds of assignment on behalf of the Company; and *Re Fresh Provision Preserving Company, Worcester's case* (W. N. 1867, p. 62).

See also *Darcy* v. *The Tamar, Kit Hill, and Collington Railway Company* (Law Rep. 2 Ex. 158), *post*, with regard to directors acting together and as a board.

Where Articles of Association of a Company formed for the working of collieries provided that the business of the Company should be carried on under the management of the board of directors, and that the board, in addition to the powers and authorities by the statutes, and by those presents expressly conferred upon them, might execute all such agreements, and generally do all such acts and things as were by the statutes and those presents directed or authorised to be executed or done by the Company in meeting, &c., it was held that the directors were authorised to make a contract with an engineer for the erection of a pumping engine and machinery, and that this Act did not require it to be under seal: (*The South of Ireland Colliery Company* v. *Waddle*, Law Rep. 3 C. P. 463.)

Where a clause in the Articles of Association provided that the directors might, with the consent of an extraordinary general meeting, "transfer and sell the business of the Company, or purchase or amalgamate with the business of any other Company of a like nature," it was held that the above clause, even if it authorised the directors, with the consent of an extraordinary general meeting, to dispose of all the assets of the Company, yet was not sufficient to empower them with such consent to compel a dissentient shareholder to become a member in a new Company with more extended objects, nor, it would seem, in any new Company at all: (*Re Empire Assurance Corporation, Ex parte Bagshaw*, Law Rep. 4 Eq. 341; 36 L. J. Ch. 663; 16 L. T. N. S. 346.)

Articles may authorise the absorption by a Company of other Companies without permitting the Company to be absorbed itself. The M. Bank, having for its objects (*inter alia*), as stated by its Memorandum of Association, "the subscribing for, or taking shares in, the entering into treaty, acting, or uniting with, the buying up or absorbing any other Company, whether British or foreign, carrying on any business included among the objects of the Company, and the sale or transfer of the business of the Company or any part thereof, to any Company or individuals," agreed by its directors to be voluntarily wound-up and amalgamated with the B. Bank. This agreement was confirmed, in accordance with the Articles of Association, at a general meeting of the shareholders. Subsequently, on the B. Bank being wound-up, the liquidators applied to the court to have the name of D., a shareholder in the M. Bank, placed on the list of contributories. D. had never assented to the amalgamation; never applied for, or been allotted any shares in, and had never been entered on the register of, the B. Bank. It was held, that, inasmuch as the power given to the directors of absorbing other Companies did not extend to the absorption of the Company itself,

the old business of the M. Bank had been extinguished by the amalgamation, and D. was not a contributory: (*Re London, Bombay, and Mediterranean Bank, Drew's case*, 16 L. T. N. S. 657, Ch.)

See also *The Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan* (Law Rep. 6 Eq. 91, *post*); and *Clinch* v. *The Financial Corporation* (Law Rep. 5 Eq. 450), confirmed on appeal (W. N. 1868, p. 246).

Where Articles of Association provided that any director who should accept or hold any other office under the Company than that of manager, should thereupon be disqualified from being, and should cease to be, a director, it was held that A., who had been appointed secretary at a salary, and whilst secretary was elected director, and appointed upon a committee to exercise certain powers of a director, and who from the time of his election received salary as a committeeman, but ceased to receive salary as secretary, though he continued to perform all the duties of the office, did not hold an "office" under the Company so as to disqualify him from being party as a director to the making of a call: (*The Iron Ship Coating Company, Limited*, v. *Blunt*, Law Rep. 3 C. P. 484.)

The duties of the agent of a limited Company being in the nature of personal service, and as such incapable of being enforced in equity, the court refused to restrain the directors from acting upon or enforcing the resignation of A., whose management and agency were made prominent conditions in the prospectus on the formation of the Company, and expressly provided for by the Articles of Association. In refusing to grant the injunction, the court put the directors upon an undertaking not to take advantage, in proceedings at law to recover the amount due on A.'s shares, of his resignation, which was alleged by him to have been wholly conditional on his being relieved from all liability in respect of his shares: (*Mair* v. *Himalaya Tea Company*, Law Rep. 1 Eq. 411; 11 Jur. N. S. 1013; 13 L. T. N. S. 586.)

Where articles require directors to hold a certain number of shares, it seems that directors, voting to themselves gratuitously the number of shares required as a qualification, will, on the winding-up of the Company, be rendered liable to the full amount of such shares: (*Re Imperial Silver Quarries Company*, 16 W. R. 1220.)

Where articles empowered directors to purchase out of the funds of a Company, upon such terms as they should think fit, shares of the Company from persons willing to sell, it was held on a winding-up that directors who had so purchased shares should be placed on the list of contributories, although they were mere trustees for the Company, but that they were entitled to a declaration that they had a right to be indemnified out of the assets of the Company, in respect of all payments made or to be made by them on account of these shares: (*Re Universal Banking Corporation, Ex parte Challis and others*, 17 L. T. N. S. 637; W. N. 1868, p. 63.)

By the Articles of Association of a joint-stock bank it was provided that the directors should be entitled to set apart and receive for their remuneration in each and every year, commencing from the incorporation of the Company, a sum not exceeding 4000*l*., and to divide the same among them as follows: namely, three-fourths to be paid to and divided amongst the directors forming the board in London, as they should from time to time determine, and the remaining one-fourth thereout should be allowed to and divided amongst the directors forming the said board in Dublin, as they might from time to time determine. The

defendant was appointed a Dublin director, and acted as such for two years, and at the time of his appointment a deed of covenant was entered into between him and the Company, by which he covenanted "to act and fill the position of one of the local board of directors in Dublin, at the scale of remuneration provided by the terms and Articles of Agreement of the said Company." There was one other director of the Dublin board. The board of directors never set apart any sum for the remuneration of directors. An action having been brought against defendant, for a debt alleged to be due by him to the Company, he set off his claim for remuneration of his services as a director: it was held that there having been no setting apart of a fund for this purpose, the said claim did not arise: (*The English and Irish Bank* v. *Gray*, 15 Ir. Com. Law R. 538.)

Where the declaration in an action alleged that the defendants were a Company, incorporated under "The Joint-Stock Companies Act, 1856," and that by the Articles of Association it was agreed that each director should receive 50*l.* per annum, without naming any fund out of which it was to be paid, it was held, nevertheless, that the action was well brought against the Company by the plaintiff, and ex-director: (*Orton* v. *The Cleveland Firebrick and Pottery Company*, 11 Jur. N. S. 531, Ex.)

See further as to directors whether regarded as agents or trustees, the note under sect. 18, *infra*.

By sects. 45 and 46, *infra*, Companies under this act not having a capital divided into shares, are bound to send a list of their directors to the Registrar of Joint-Stock Companies.

Powers of Borrowing.

By sect. 43, *infra*, every limited Company under this act is bound to keep a register of all mortgages and charges specifically affecting the property of the Company.

Where a limited Company was registered under a Memorandum of Association, but had no special articles, a special resolution of the shareholders was held a sufficient authority to empower the directors to borrow money on debentures: (*Bryon* v. *The Metropolitan Saloon Omnibus Company*, 3 De G. & J. 123; 27 L. J. Ch. 685.)

As to a claim against a Company by a director for money expended by him on account of the Company, where the amount of such money was in excess of a sum named in the articles as the limit beyond which the directors were not empowered to borrow, see *Re Cefn Cilcen Mining Company*, W. N. 1868, p. 295.

If the directors have power to do whatever the Company itself can do, this, as a general rule, includes the power of borrowing: (*Australian Auxiliary Steam Company* v. *Mounsey*, 4 Kay & J. 733.)

Where the articles of a Company regulate the power to borrow, their requirements must substantially be complied with in order to bind the Company.

One clause in Articles of Association provided that the Company, in extraordinary special general meeting, might authorise the borrowing of such sum or sums of money, and on such terms and conditions as they might think fit. Another clause provided that the directors might borrow such sums as they thought fit, but not above 10,000*l.*, unless borrowing a larger amount should have been previously authorised by a general meeting. It was held that the former clause did not restrict the latter, and that a borrowing to the extent of 30,000*l.*, authorised by an ordinary general meeting, was valid. The directors of the same Company

borrowed 5000*l.* from A. B. under a written agreement, one of the terms of which was, that 2000 mortgage bonds of 50*l.* each, "forming part of 25,000*l.* of mortgage bonds constituting a first charge on the property of the Company," should be deposited with A. B. as collateral security for the sum, which was secured by two promissory notes of 2500*l.* each: and it was held that as the directors had power to charge the property of the Company, and the intention to create the charge appeared from this agreement, a valid charge was created, though the mortgage bonds were invalid through incompleteness. The directors afterwards borrowed a further sum of 2700*l.* from A. B., and deposited with him other incomplete mortgage bonds, with a letter stating that they were deposited "as collateral security for our promissory note for 2700*l.*, the securities to be held on same terms and conditions as those under agreement with reference to the two previous notes of 2500*l.* each." It was held, that there was a valid charge for this sum also: (*Re The Strand Music Hall Company, Ex parte The European and American Finance Corporation*, 3 De G. J. & S. 147, on appeal.)

Debentures issued by a Company under a general power of borrowing in part discharge of existing debts are valid: (*Re Inns of Court Hotel Company*, Law Rep. 6 Eq. 82.)

Where bankers advanced money to the contractor for the works of a Company for the purpose of completing those works, and the contractor and the Company then mortgaged the plant, &c., and the property of the Company to the bankers to secure the moneys advanced and further advances, but the Company afterwards filed a bill to set aside the mortgages as being *ultra vires* the Company, and as having been improperly obtained from them by the bankers, it was held that, having regard to the Articles of Association of the Company, and the evidence in the case, the bill must be dismissed, but without prejudice to another being filed to establish the mortgages as security for moneys actually due: (*The Crewer and Wheal Abraham United Mining Company* v. *Williams*, 14 L. T. N. S. 93, Ch.)

Debentures.

Debentures are either covenants to pay or mortgages under the Company's seal. When given to secure money borrowed, their validity depends on the power of the Company to borrow.

The burden of showing the invalidity of such instruments rests on the party impugning them, and they are binding on the Company, although the directors have not complied with the regulations of the Company relating to such securities: (*Agar* v. *Athenæum Insurance Society*, 3 C. B. N. S. 725; *Magdalena Steam Navigation Company*, 6 Jur. N. S. 975; *Royal British Bank* v. *Turquand*, 5 E. & B. 248; and 6 *Ib.* 327.)

A debenture purporting to be an assignment of "the undertaking, and all the real and personal estate" of the Company by way of mortgage, to secure the repayment of a sum of money at a future date, has been held to create a valid charge on all the personal estate of the Company existing at the date of the debenture, but not on subsequently acquired personal estate: (*New Clydach Sheet and Bar Iron Company*, Law Rep. 6 Eq. 514.) The debentures of the *Marine Mansions Company*, Law Rep. 4 Eq. 601, expressly extended to subsequently acquired property, and were therefore distinguishable from those in question in the cases last cited.

Certain debentures were issued by a Company, whose object was "to erect, purchase, take on lease, &c., and to sell, let, exchange, and obtain

freehold and leasehold house property, hotel buildings, land, furniture," &c., and to furnish such hotels. One of the powers conferred on the directors by their registered deed of association was "to borrow on mortgage or debenture bonds any sums necessary for carrying on their business." The debentures so issued contained a declaration that the Company thereby pledged "the property belonging to them for the time being, during the subsistence of the debeuture, with all the buildings and stock on and connected with their said property and all the receipts and revenues to arise therefrom." The amount of such debentures was held to be a first charge upon all the property and effects of the Company which belonged to them at the date of the order to wind-up such Company: (*Re Marine Mansions Company*, Ib.; 17 L. T. N. S. 50, Ch.)

B. and D. agreed in writing with the promoter of a Company to sell their business to the Company when formed, part of the purchase-money to be paid in debentures of the Company, payable to the bearer. The Articles of Association adopted this agreement, and directed it to be carried into effect. The directors, accordingly, gave to B. and D. debentures under the seal of the Company, by each of which the Company covenanted to pay the sum therein mentioned to "B. and D., their executors, administrators, and assigns, or to the bearer herself." Some of these debentures were passed by delivery to Z., who was a *bonâ-fide* holder for value. It was held, by Rolt., L.J., that although the debentures could not at law be sued upon by the bearer in his own name, and it was questionable whether they were good at law as bonds or not, yet, that as they were conformable to the agreement between B. and D. and the promoter, which had been made binding on the Company by the articles, an effect must be given to them in equity according to their tenor. It was held, accordingly (affirming the decision of the Master of the Rolls), that in the winding-up of the Company, Z. could prove on these debentures in his own name, without being subject to any equities existing between the Company and B. and D.: (*Re Blakely Ordnance Company, Ex parte New Zealand Banking Corporation*, Law Rep. 3 Ch. App. 154.)

A Company gave to C. debentures, by each of which the Company undertook to pay to "C., or to his executors, administrators, or transferees, or to the holder for the time being of this debenture bond" the sum therein mentioned, with interest. These debentures were given in pursuance of an agreement which provided that part of the price of land sold by C. to the Company should be paid in debentures bearing interest, but did not say anything about the form of the debentures. It was held that there was nothing in the debentures to take them out of the ordinary rule that the assignee of a *chose in action* takes it subject to all the equities between the original parties to the contract; and that the holders of these debentures could only prove on them subject to all equities between the Company and C. *Re Blakely Ordnance Company* (Law Rep. 3 Ch. App. 154) was distinguished on the ground that it mainly turned on the terms of the Articles of Association: (*Re Natal Investment Company, Claim of the Financial Corporation*, Law Rep. 3 Ch. App. 355.)

Debentures issued by a Company under a general power of borrowing in part discharge of existing debts are valid: (*Re Inns of Court Hotel Company*, Law Rep. 6 Eq. 82.) In that case the directors, being empowered to issue debentures and to borrow money "upon mortgage or otherwise," issued mortgage debentures. Some of these were issued in fulfilment of contracts with tradesmen, whereby they agreed to furnish

goods to the Company on being paid partly in cash and partly in debe tures. Others were issued to the tradesmen as security for their ca balances. Giffard, V.C., held that the debentures were not invalidat by reason of their having been issued in part satisfaction of existi debts. His Honour observed, "I do not see how a distinction can drawn between the case of a creditor having simply given him a cheq or received a debenture, and the case where a sum of money which actually due to the creditor has been turned into a loan to the Cor pany;" and his Honour distinguished the case before him from th of *The West Cornwall Railway Company* v. *Mowatt* (12 Jur. 407), the ground that the latter case turned upon the fact of one of t directors having some interest in the contract, which was consequent void.

Debentures issued by directors in fraud of their shareholders to person having notice of the fraud are not only invalid in his hands, b also in those of subsequent *bonâ-fide* holders for value without noti of the fraud: (*Athenæum Life Insurance Society* v. *Pooley*, 1 Giff. 10 3 De G. & J. 294.)

But if there is no limit set by statute an excessive exercise of t power to borrow, it is probable, would be held valid in favour of a *bon fide* lender without notice. And even where there is a statutory limi say to the amount of 10,000*l.*, and there is a simultaneous issue of d bentures to the amount of 15,000*l.*, it is also probable that all, ev those *ultra vires*, would be held valid, in favour of *bonâ-fide* lenders wit out notice of the invalidity.

By "The Mortgage Debenture Act, 1865" (28 & 29 Vict. c. 78), *pos* facilities are given for the issue of transferable mortgage debenture upon certain terms and conditions, by Companies under this act th are restricted by their Memorandam of Association to the objects advancing money on real securities, and of borrowing money on tran ferable mortgage debentures, or on real securities.

In *Hopkins* v. *Worcester and Birmingham Canal Proprietors* (La Rep. 6 Eq. 437), the holder of a debenture of the form prescrib by the Company's Act was held to be entitled, upon non-payme by the Company, after six months' notice, of the principal mon secured by the debenture, to a receiver, although there was n and never had been, any arrear of interest, and although none of t debenture holders refused, and others might not be able, to consent be paid off, "I have no hesitation in saying," says Giffard, V.C., in th case, "that where an application of this kind is made by a credit whose principal is due, and who has given six months' notice, for hi to have a receiver appointed is *ex debito justitiæ*.

Mortgage of future Calls.

Future calls, which, under the deed of settlement of a society, are be made when it shall appear to the directors necessary or expedie cannot be validly mortgaged under a provision in the deed of settlemer authorising the directors to borrow on the security of the funds or pr perty of the society and to cause the funds or property on the security which any sum shall be so borrowed, to be assigned, transferred, convey or surrendered by way of mortgage, to the person from whom su sums shall have been borrowed: (*Re The British Provident Life Assura Society, Ex parte Stanley*, 33 L. J. Ch. 535, on appeal.)

As to debentures issued by a Company including future calls, s *King* v. *Marshall*, 34 L. J. Ch. 163.

See also *Re Humber Iron Works Company, Ex parte Warrant Finance Company*, 16 W. R. 667, on appeal.

Bills of Exchange.

The power of directors to issue bills of exchange or promissory notes is treated of fully under sect. 47, *infra*. See particularly *Re Blakely Ordnance Company, Ex parte Mercantile and Exchange Bank* (W. N. 1867, p. 147), *Gordon* v. *Sea, Fire, and Life Assurance Company* (1 H. & N. 599), *Forbes* v. *Marshall* (11 Exch. 166), *Maclae* v. *Sutherland* (3 E. & B. 1), *Slark* v. *Highgate Archway Company* (5 Taunt. 792), and *Thompson* v. *The Wesleyan Newspaper Company* (8 C. B. 849).

Power to issue Preference Shares.

Preference shares cannot be issued unless specially authorised by the original constitution of the Company. Where the Articles of Association of a Company formed under "The Companies Act, 1856," contained no power to issue preference shares, and the Company in general meeting passed a resolution for the issue of some of the shares with a preferential dividend, the court, upon motion for injunction by three shareholders who had notice of, but did not attend, such general meeting, granted an injunction restraining the issue of such preference shares: (*Hutton* v. *The Scarborough Cliff Hotel Company*, 34 L. J. N. S. Ch. 643.)

Where under the Articles of Association a Company was empowered at a special meeting to increase its capital by the issue of new shares, these to be of such nominal value and subject to such conditions as to payment of calls or proportion of profits, as might be determined, it was held that this did not authorise the issue of preference shares: (*Moss* v. *Syers*, 32 L. J. Ch. 711; 9 L. T. N. S. 252.)

Forfeiture and Cancellation of Shares.

A Company has no power to forfeit the shares of its members, unless such a power is expressly given by regulations of the Company; and even a majority of shareholders in general meeting cannot confer it: (*Re National Patent Steam Fuel Company*, 4 Drew. 535; 28 L. J. Ch. 637; on appeal, 4 De G. & J. 46; *Clarke* v. *Hart*, 5 Jur. N. S. 447; 6 Ho. Lords Cas. 633; *Ex parte Barton*, 5 Jur. N. S. 420.)

The prescribed mode of executing the power must be exactly complied with, and it must be exercised *bonâ fide* for the purpose for which it was conferred.

Where a different course is pursued, the forfeiture may be impeached in a court of equity and invalidated: (*Richmond's case* and *Painter's case*, 4 Kay & J. 305; *Harris* v. *North Devon Railway Company*, 20 Beav. 384; *Preston* v. *The Grand Collier Dock Company*, 11 Sim. 327; and *Re Agriculturists' Cattle Insurance Company, Stewart's case*, Law Rep. 1 Ch. App. 511.)

With regard to the remedy at law, see *Cockerell* v. *The Van Dieman's Land Company* (18 C. B. 454; 2 Jur. N. S. 976), where an action for damages was brought against a Company for improperly withholding shares alleged to be forfeited. See also *The Van Dieman's Land Company* v. *Cockerell* (1 C. B. N. S. 732) and *Graham* v. *The Van Dieman's Land Company* (1 H. & N. 541).

A clause in articles that shares shall become absolutely forfeited on non-payment of calls does not enable shareholders to get rid of their shares by refusing to pay a call. In such a case the clause will be

regarded as inserted for the benefit of the Company, and there is no forfeiture until a forfeiture is declared: (*Moore* v. *Rawlins*, 6 C. B. N. S. 289.)

Where the Articles of Association of a Company provided that notice should be given to all members of the Company of every meeting, and that no other business except that specified in the notice should be transacted at such meeting, it was held that the forfeiture and cancellation of certain shares in pursuance of a resolution to that effect passed at a meeting convened by a notice containing no reference to the proposed cancellation of shares, was invalid, although the articles provided for the forfeiture and cancellation of shares: (*Re London and Mediterranean Bank, Wright's case*, 17 L. T. N. S. 635.)

By the articles of a Company, overdue calls were to carry interest at twenty-five per cent., and by clause 50, it was provided that the forfeiture of a share should involve the extinction at the time of the forfeiture of all interest in, and all claims and demands against, the Company, in respect of the share, and all other rights incident to the share, but that the shareholder should, notwithstanding, be liable "to pay to the Company all calls owing on such share at the time of such forfeiture." It was held (affirming the decision of the Master of the Rolls), upon the construction of the articles, that a member whose shares had been forfeited for non-payment of a call was liable to pay the call, but not any interest upon it. It was held, also, that interest was not payable under the stat. 3 & 4 Will. 4, c. 42, s. 28, there not having been given after the forfeiture any notice claiming interest on the sum made payable by the 50th clause of the articles: (*Re Blakely Ordnance Company, Stocken's case*, Law Rep. 3 Ch. App. 412.)

It was also held by the Master of the Rolls in that case that the former owner of forfeited shares could not be placed on the list of contributories as a present member, in respect of the calls owing on his shares at the time of forfeiture: (*Re Blakely Ordnance Company, Needham's case*, Law Rep. 4 Eq. 135). It follows from the same case that no person can be settled on the list of contributories as a past member until it has been actually ascertained that the present members are unable to satisfy the contributions required to be made by them.

Directors have, by Table A, clause 51, all the powers of the Company, unless where there is a provision to the contrary in the Act or articles. But, as directors can have only the powers of the Company, it is clear that directors cannot, more than the Company, forfeit shares, unless that power is expressly conferred on them by the Articles of Association.

Where shares have been forfeited by a valid resolution of directors, it is immaterial that the name of the owner has not been removed from the register of members: (*Re Tovistock Ironworks Company, Lyster's case*, Law Rep. 4 Eq. 233; 36 L. J. Ch. 616; 16 L. T. N. S. 824). In that case, however, Lyster's name was removed from the Company's "share ledger," which the Company used as its "share register."

A shareholder in a Company, being in a position to file a bill against the Company to have his name removed from the register, wrote to the secretary declining to have anything further to do with the Company, and requesting that his deposit might be returned. The deposit was returned, but his name remained on the register of shareholders. Eighteen months afterwards the Company was ordered to be wound-up. The Master of the Rolls held that the shareholder was not a contributory: (*Re The Canadian Native Oil Company, Fox's case*, Law Rep.

5 Eq. 118.) This case is much stronger than *Lyster's case* as to the immateriality of the name of the owner of a forfeited share continuing on the register once that the forfeiture is otherwise complete.

Fifty shares in a Company were registered in the joint names of a father and son on their application, and they paid 150*l.* by way of deposit and allotment money. Shortly afterwards a call of 2*l.* a share was made. The father became a director, and having, as he said, discovered that the Company was formed under circumstances of gross fraud, wrote to the chairman, warning the directors against involving the shareholders in any fresh liability. Shortly after he resigned his seat as director. Two months afterwards (the call being unpaid), the father wrote to the chairman, requesting the directors to declare the shares forfeited; and said that he and his son must be satisfied that their names were taken off the register. A resolution was thereupon passed that the shares be forfeited; but the names were not removed from the register of shareholders, and were on it when the winding-up order was made, more than a year afterwards. No steps were taken on one side to enforce the call, or on the other to recover the deposit and allotment money. Upon summons by the official liquidator, that the names might be settled on the list of contributories, it was held that the so-called forfeiture of shares was void, and that the respondents' names must be placed on the list of contributories: (*Re London and Provincial Starch Company, Gower's case*, Law Rep. 6 Eq. 77.)

Giffard, V.C., ruled thus in accordance with the decision in *Barry's Representatives' case* (2 Drew. & Sm. 321). In fact, the forfeiture was a fictitious proceeding to enable the recalcitrant shareholders to separate from the Company; such as happened in *Stanhope's case* (Law Rep. 1 Ch. App. 161, 168), and in several other of the compromises entered into between the Agriculturist Cattle Insurance Company and some of its shareholders. But in the case of a regular forfeiture, it follows from *Fox's case, ante*, that it is not material that the name of the owner of the forfeited shares is not removed from the register prior to the winding-up of the Company.

A shareholder in a Company received a notice that on non-payment by him of arrears of calls on a certain day, his shares "would be forfeited without further notice." He also knew that the question of winding-up the Company was under consideration. Two days before the day appointed for the payment of the arrears, he went to the Company's office, paid the arrears on a few of his shares, and took a receipt, saying that on the rest he would submit to a forfeiture. The directors, at a board meeting, five days afterwards, examined the list of defaulters, and declared the shares of some of them, whom they considered as not solvent, to be forfeited; but they did not declare the shares of this particular shareholder to be forfeited, and they continued to treat him as the holder of the whole number of shares. The Articles of Association of the Company provided that "in the event of non-payment at the time and place appointed by the notice, any share might thereupon be forfeited without any further act to be done by the Company: it was held that the shares upon which the arrears were not paid-up were not absolutely forfeited by the non-payment, and that the Company's right of option remained; and, as the Company had declared their intention of retaining the shareholder on the list, that he must, upon winding-up, be held to be a contributory in respect of his full number of shares: (*Re East Kongsberg Company, Bigg's case*, Law Rep. 1 Eq. 309; 35 L. J. Ch. 216; 12 Jur. N. S. 89; 13 L. T. N. S. 627.)

The Articles of Association of a joint-stock Company provided that if a shareholder should fail in paying any call, the Company might give him notice that in default of payment within a specified time his shares would be forfeited; that if the requisitions of any such notice were not complied with, the shares might be forfeited by a resolution of the directors to that effect; that when any share had been so forfeited, notice of such forfeiture should be given to such shareholder, and an entry should be forthwith made in the register of shareholders, stating the date of such forfeiture; and that any share so forfeited should become the property of the Company. K., a shareholder in the Company, made default in payment of his calls, and notice was sent to him in due form that, unless he paid the calls by the 2nd of September, they would be forfeited. The time having elapsed without payment, the secretary made entries in the books on the 3rd of September that the shares were forfeited, and had been transferred to the Company. But there was no entry in the minutes of any resolution having been passed by the directors, nor any evidence of any notice of the forfeiture having been sent to K.: it was held (reversing the decision of the Vice-Warden of the Stannaries Court) that there was a valid forfeiture of the shares, and that K. could not be placed on the list of contributories as a member of the Company. As the entry of forfeiture on the books could not have been properly made without a resolution of the directors, the court was bound to assume that such a resolution had been passed. It was also held that the forfeiture was complete on the 3rd of September without sending a notice of it to the shareholders, the provision in the articles as to sending the notice being mandatory only, and not of the essence of the forfeiture: (*Re North Hallenbeagle Mining Company, Knight's case*, Law Rep. 2 Ch. App. 322; 15 L. T. N. S. 546.)

Lord Justice Cairns, in this case, observed that *Woollaston's case*, *infra*, had decided "that a resolution of forfeiture would not be invalid in the eye of this court if made prospectively; that is to say, before the actual day arrived at which there was a default in payment of the calls." His Lordship then added with respect to the notice, "There is this very remarkable circumstance that the notice which is there to be given is spoken of as a notice of forfeiture which has actually taken place. Moreover, the forfeiture is clearly, on that clause, to date, not from the giving of any notice, but from a resolution of the directors declaring a forfeiture." These observations show the soundness of the principle on which the case was decided, viz., that the notice was a matter of form, and subsequent to the forfeiture.

In *Woollaston's case* (4 De G. & J. 437, on appeal; 5 Jur. N. S. 617), W., in expectation of being appointed medical referee to an insurance Company, and being informed by the secretary that there would only be two referees, signed the deed of settlement for ten shares. A resolution was then passed by the directors that W. should be so appointed from the date of his signing the deed for 200 shares. W. signed the deed for the additional 190 shares. Afterwards discovering that there would be four referees instead of two, he resigned his office, and demanded back his deposit. The directors gave him notice that if he did not pay a call then made, his shares would be forfeited under a power to that effect given them by the deed. They never passed a resolution forfeiting the shares. It was held by the Lords Justices (reversing a decree of Kindersley, V.C.), that the notice was a clear and direct forfeiture of W.'s shares, which forfeiture was submitted to by W. for two years, and that his name ought to be

removed from the list of contributories. This case seems somewhat antagonistic to the general current of authorities with respect to forfeiture. The case is not unlike in principle to *Bloxam's case*, where notice of a particular fact was presumed on the part of a person in treating with directors. Forfeitures, however, are *strictissimi juris;* and it would seem to be unsafe to rely upon the decision in *Woollaston's case*, except in precisely similar circumstances.

Directors will be restrained by injunction for declaring shares to be forfeited for non-payment of calls, until they have taken proper steps for enforcing payment of previous calls from other members (*Preston* v. *The Grand Collier Dock Company*, 2 Rail. C. 335; S. C., 11 Sim. 327); and where they have wrongfully cancelled shares, a court of equity will, at suit of the holder, order the cancellation to be set aside: (*Stubbs* v. *Lister*, 1 Y. & C. C. C. 81.)

So a wrongful forfeiture is void, and an account will be decreed as if it had not taken place: (*Stubbs* v. *Lister*, 1 Y. & C. C. C. 81; *Blisset* v. *Daniel*, 10 Hare, 493; *Hart* v. *Clarke*, 24 L. J. Ch. 137.)

It is a general rule of equity that any right (except in cases of fraud) may be barren by acquiescence. It is necessary, therefore, that a person injuriously affected by the forfeiture of shares should not acquiesce for a considerable period in such forfeiture, else he will be deemed to have submitted to the forfeiture. *Omnis ratihabitio retrotrahitur et mandato priori æquiparatur*: (*Prendergast* v. *Turton*, 1 Y. & C. C. C. 98; L. J. N. S. Ch. 22; 13 Ch. Cas. 268; *Woollaston's case*, *ante*; *Re The Agriculturist Cattle Insurance Company, Brotherhood's case*, 31 L. J. N. S. Ch. 861.)

The directors of a Company had treated shares as forfeited for non-payment of calls, and credited the Company with the amount of the shares in a subsequent report. On a winding-up, Vice-Chancellor Wood held that the shareholder's name should not be placed on the list of contributories on the application of the official manager. Although a clause in the articles provided that the non-payment for three months of a call should involve, *ipso facto*, the forfeiture of the shares in question, yet, his Honour rested his judgment not so much on that clause as upon the ground that in fact the directors had exercised their right of forfeiture: (*Re The State Fire Insurance Company, Webster's case*, 32 L. J. N. S. Ch. 135.)

The Agriculturist Cattle Insurance Company has been, unfortunately for itself, a prolific source of decisions respecting forfeitures of shares. The chief cases of forfeiture under that Company were connected with compromises between the forfeiting shareholders and the directors. However, the law of forfeiture also has been amply illustrated by the cases decided with reference to that Company. Those cases are still strictly in point with cases under this act, where directors have the power to forfeit shares.

The compromises entered into between the shareholders of the Agriculturist Cattle Insurance Company and the directors were effected through the medium of a fictitious forfeiture. Such of these compromises as were communicated to the general body of the shareholders were held binding upon the Company; whilst others, after the lapse of twelve years, were held to be void *ab initio*, on the ground that they were fictitious, and that not having been communicated to the Company the necessary foundation of notice to the Company was wanting to raise any case of acquiescence on their part: (see *Stanhope's case*, 14 W. R. 42; on appeal, *Ib.* 266; *Brotherhood's case*, 31 L. J. N. S. 861; *Lord Belhaven's case*, 34 L. J. Ch. 503.)

Forfeited shares may be disposed of afterwards by a general meeting, Regulations, Table A., cl. 20. The member still continues liable for all calls then due by him, cl. 21: (see *Great Northern Railway Company* v. *Kennedy*, 6 Rail. C. 5; 19 L. J. Ex. 11; *Giles* v. *Hutt*, 3 Exch. 18.)

A power to forfeit does not imply a power to cancel the forfeited shares; for that would diminish the capital of the Company: (*Re Athenæum Life Assurance Society*, 4 K. & J. 305.) See the next case, however, on that point.

In December, 1866, the directors of a Company entered into a contract with M., one of the terms of which was that the Company would "forthwith" cancel all shares in the Company then standing in M.'s name which were not fully paid up. The contract was assented to by the Company in general meeting, and was in great part performed, but M.'s shares were not cancelled on the 13th of February following when resolutions were passed for a voluntary winding-up, which was afterwards continued under supervision. The articles of the Company provided that no contracts by the directors, to which the assent of the Company in general meeting should be given, should be afterwards impeached on any grounds whatever. M. filed a bill in equity for specific performance of the contract, and it was held that the agreement for the cancellation of the shares could not be impeached; and further, that M.'s name ought not to be on the list of contributories as a present member. An order was made to that effect, but without prejudice to any application that might be made to make him a contributory as a past member: (*Marshall* v. *Glamorgan Iron and Coal Company*, Law Rep. 7 Eq. 129.)

In his judgment Vice-Chancellor Giffard observed: "That part of the agreement (*i.e.*, with regard to the cancellation) is fairly open to discussion; but while it must be admitted on the one hand that the ordinary powers usually conferred on directors and meetings of shareholders do not authorise the cancellation of shares, it must be equally admitted on the other that provisions for the forfeiture of shares are usual, and, if duly and *bonâ fide* called into operation, perfectly legal. The same also must necessarily be the result and effect of provisions for the cancellation of shares, if provisions there be which authorise anything of the kind." His Honour added, in answer to one of the arguments used: "Cancellation of shares is no more in reduction of capital than is forfeiture of shares."

Lien of Company on Shares.

Where the articles of a Company provide that the Company shall have a lien on the shares of its members for all moneys which may be due from them to the Company, the lien so created will be available against all persons claiming shares under a member indebted to the Company: (*Ex parte Plant*, 4 D. & C. 160.)

A banking Company, by its articles, had a first and paramount lien upon the shares of any shareholder "for all moneys due to the Company from him." The bank held bills of a shareholder for a debt due to it. It was held that the amount of the bills was, before they arrived at maturity, "moneys due to the Company," for which it had a lien on the shares, though the remedy for recovering the amount was postponed, and that, therefore, the lien of the bank had priority over a charge created on the shares by the shareholder before the bills arrived at maturity: (*Re The London, Birmingham, and South Staffordshire Banking Company*, 34 Beav. 332.)

Provision for Bankruptcy of Shareholder.

See the suggestion by Blackburn, J., in *Martin's Patent Anchor Company* v. *Morton* (Law Rep. 3 Q. B. 312) as to providing in the Articles of Association that, when a shareholder becomes bankrupt, and his assigns refuse to take the shares, the Company should have power to sell or take them.

Where the Deed of Settlement of a banking Company contained a clause that the shares of any shareholder becoming bankrupt should be sold by the Company, and the proceeds of such sale paid over to the assignees of the bankrupt, after deducting all moneys owed by the bankrupt to the Company for advances, it was held that this clause gave the Company a first charge on the shares in respect of such advances: (*Deering and M'Question* v. *The Hibernian and Joint-Stock Banking Company*, 16 W. R. 578.)

See on this subject, *Re General Estates Company, Hastie's case*, Law Rep. 7 Eq. 3.

Costs of Business carried on ultra vires.

Where the directors of a Company carried on a business not authorised by the Deed of Settlement, and costs were thereby incurred, the solicitors of the Company were held to have no lien for their costs on the papers of the Company. Where, in such a case, moneys have been recovered in any of the actions, although the solicitors would have had a lien for their costs on such moneys while in their hands, yet, after they have paid over such moneys to the Company, and allowed them to be incorporated with the general assets, they have no lien on those assets in respect of such costs. Where, in such a case, moneys have been paid by the Company to the solicitors on account of costs generally, the solicitors have no right, *post litem motam*, to appropriate such payments to the costs incurred in respect of the unauthorised business; but, on the contrary, the court will appropriate the payments to the costs which the Company was liable to pay: (*Re Phœnix Life Assurance Company, Howard and Dolman's case*, 1 H. & M. 433.)

15. *Application of Table A.*—In the case of a Company limited by shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A. in the first schedule hereto, (*a*) the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company in the same manner and to the same extent as if they had been inserted in Articles of Association, and the articles had been duly registered.

(*a*) *Table marked A. in the first schedule hereto.*]—For Table A. see the first schedule to this act, *post*. As to the application of Table A. to a Company in the absence of Articles of Association, see *Totterdell* v. *The Fareham Blue Brick and Tile Company*, Law Rep. 1 C. P. 674.

With regard to the illegal issue of shares by a Company regulated by Table A., see *Re New Zealand Banking Corporation, Sewell's case*, Law Rep. 3 Ch. App. 131.

16. *Stamp, signature, and effect of Articles of Association.*]—The Articles of Association shall be printed, they shall bear the same stamp as if they were contained in a deed,(*a*) and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: when registered, they shall bind the Company and the members thereof (*b*) to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this act; and all moneys payable by any member to the Company, in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company, (*c*) and in England and Ireland to be in the nature of a specialty debt. (*d*)

(*a*) *The same stamp as if they were contained in a deed.*]—The deed stamp is 1*l.* 15*s.* where there are less than thirty folios. Where there are thirty folios or upwards, the duty is 1*l.* 15*s.* for the first fifteen folios, and a further progressive duty of 10*s.* for every fifteen folios over and above the first fifteen folios.

(*b*) *They shall bind the Company and the members thereof, &c.*]—Where the articles are actually signed, they will, of course, strictly bind the person who signs, unless there be fraud, or material alteration in the articles after execution. F. signed the Memorandum and Articles of Association of a Company. After signature, but before registration, a sheet of the articles was taken out and a new sheet substituted for it without his privity, but with the approbation of the persons then managing the Company. There was a conflict of evidence as to whether the contents of the substituted sheet were identical with those of the old one, and whether there was not a material alteration. It was held that the articles were not binding upon F., that the articles and Memorandum must be taken as together constituting one instrument, and that F. was not a contributory. And (per Turner, L.J.) if the substitution of a sheet in a deed after execution does not *ipsa facto*, without reference to the question whether there is any variation in the contents, make the deed void, as to which *quære*, at all events it makes the deed void, unless it be most clearly proved that the contents of the old and the substituted sheets are identical, or, at least, that there is no material difference between them: (*Re The United Kingdom Ship Owning Company, Felgate's case*, 2 De G. J. & S. 456, on appeal.) See, however, *Re Barned's Banking Company, Peel's case* (Law Rep. 2 Ch. App. 674), *post*. But where a person has not actually signed the articles, it is necessary, in order to make them binding on him, to show that he has become a member of the Company. As to what constitutes a member, see sect. 23, *infra*. "The statute only meant to bind those

who had actually become members. Anyone who had, without fraud, taken shares could not allege ignorance of anything contained in the Memorandum of Association or in the Articles of Association merely because he had not signed or sealed them ; but if he never actually signed or sealed them, nor had notice of what they contained, the statute cannot be taken to impute to him knowledge of their contents, so as to protect those who by a fraud had induced him to do that which, in the absence of fraud, would have precluded him from saying he was ignorant of their contents. The statute does not authorise anyone to sign or seal the instruments in question till after he has become a member:" (per Lord Cranworth, *The Directors, &c., of the Central Railway Company of Venezuela* v. *Kisch*, Law Rep. 2 H. L. 123.)

(*c*) *Shall be deemed to be a debt due from such member to the Company.*]—See sect. 70, *post*, as to the recovery of calls or other moneys due from a member of a Company in his character of member.

See *Martin's Patent Anchor Company, Limited*, v. *Morton ;* the *Same* v. *Hewett* (Law Rep. 3 Eq. 306), *post*, as to the meaning of this section in connection with sect. 154 of "The Bankruptcy Act, 1861."

See also *Re General Estates Company, Hastie's case*, Law Rep. 7 Eq. 3, *post*.

Where a shareholder had filed a bill in equity against the directors of a Company for applying the funds of the Company improperly, and for purposes unauthorised by its articles, the court refused to relieve him on that ground from payment of a call made by the directors previously to a winding-up order, although he offered to lodge the amount of the call in court to abide the result of his suit against the directors: (*Philips* v. *Ottoman Financial Association ; Re Ottoman Financial Association*, W. N. 1867, p. 107.)

(*d*) *In the nature of a specialty debt.*]—See sect. 70, *infra*, as to actions against a member of a Company to recover moneys due from him in his character of member. Moneys payable as above mentioned being in the nature of a specialty debt, an action for their recovery is not barred by the lapse of less than twenty years: (*Cork and Bandon Railway Company* v. *Goode*, 13 C. B. 826, and *Robinson's Executors' case*, 6 De G. M. & G. 572.)

GENERAL PROVISIONS.

17. *Registration of Memorandum of Association and Articles of Association, with fees as in Table B.*—The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint-Stock Companies (*a*) hereinafter mentioned, who shall retain and register the same : (*b*) There shall be paid to the registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B. in the first schedule hereto, (*c*) the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct ; and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C. in the first schedule hereto, (*d*) the several fees therein specified, or such smaller fees as the

Board of Trade may from time to time direct: All fees paid to the said registrar in pursuance of this act shall be paid into the receipt of Her Majesty's exchequer and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

(*a*) *The Registrar of Joint-Stock Companies.*]—As to the constitution of the registration office, see sect. 174, *infra*.

(*b*) *Register the same.*]—See *Re Barned's Banking Company, Peel's case*, Law Rep. 2 Ch. App. 674, where the registrar registered a Memorandum of Association altered in his presence after its execution, and was held censurable for so doing.

(*c*) *The table marked B. in the first schedule hereto.*]—For Table B. of fees, see *post*.

(*d*) *The table marked C. in the first schedule hereto.*]—For Table C. of fees, see *post*.

18. *Effect of registration.*—Upon the registration(*a*) of the Memorandum of Association, and of the Articles of Association in cases where Articles of Association are required by this act or by the desire of the parties to be registered, the registrar shall certify(*b*) under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: The subscribers of the Memorandum of Association, together with such other persons as may from time to time become members of the Company,(*c*) shall thereupon be a body corporate(*d*) by the name contained in the Memorandum of Association,(*e*) capable forthwith of exercising all the functions(*f*) of an incorporated Company, and having perpetual succession and a common seal,(*g*) with power to hold lands, but with such liability on the part of the members(*h*) to contribute to the assets of the Company in the event of the same being wound-up as is hereinafter mentioned: A certificate of the incorporation of any Company(*i*) given by the registrar shall be conclusive evidence that all the requisitions of this act in respect of registration have been complied with.(*k*)

(*a*) *Upon the registration, &c.*]—Where the plaintiff in an action was engaged by the defendants, who afterwards formed themselves into a limited Company, and he continued in the service of the Company, after the expiration of his first engagement, it was held that the defendants could only be liable as a Company and not as individuals, though practically they were the Company: (*Sequelin* v. *Terrell*, 16 L. T. N. S. 537. Lush, J.)

See also *Oakes* v. *Turquand, Re Overend, Gurney, and Co.*, Law Rep. 2 H. L. 325.

(*b*) *The registrar shall certify.*]—If the registrar refuses to grant a certificate of incorporation, he may be compelled to do so by *mandamus*.

(*c*) *Members of the Company.*—For a definition of member, see sect. 23, *infra*.

(*d*) *Shall thereupon be a body corporate, &c.*]—Among the many definitions that have been given of a body corporate the following is probably the clearest and most complete. A corporation or body incorporate is a collection of many individuals united in one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of rights more or less extensive according to the design of its institution, or the powers conferred upon it either at the time of its creation or at any subsequent period of its existence: (1 Kyd on Corp. 13.)

It has been observed, however, by Lord Cranworth (*Oakes* v. *Turquand, Re Overend Gurney and Co.*, Law Rep. 2 H. L. 358), "It must be borne in mind that a Company formed under the statute of 1862 is not a mere common-law corporation; its rights and liabilities depend in great measure on statutable provisions, and in order fully to understand and interpret them we must consider not merely the enactments of 'The Companies Act, 1862,' but also the other acts previously passed in *pari materia*."

Lord Justice Cairns, speaking of a Company incorporated under this act, said, "The Memorandum of Association is the charter and limit of the powers of the Company, just as the Articles of Association may be said to be its rules of internal government": (*Re Cachar Company, Lawrence's case*, Law Rep. 2 Ch. App. 424.)

As to the Memorandum of Association, see sects. 6 and 8, *supra*. As to the Articles, see sect. 14, *supra*.

By sect. 19, *infra*, a copy of the Memorandum and Articles of Association, if any, shall be forwarded to any member at his request, on payment of one shilling.

A Company under this act may be dissolved by a compulsory winding-up under the Court of Chancery, or it may dissolve itself by a voluntary winding-up, which may be continued, if considered expedient, under the supervision of the court.

As to the winding-up of a Company, see Part IV. of this act.

A Company established with limited liability under this act, may lawfully commence business and exercise their borrowing powers before the whole of the nominal capital has been subscribed; and a representation by prospectus issued on behalf of a Company, that the capital consists of a given sum, in shares of a certain amount, does not imply that the whole capital named is to be raised at once, and that the borrowing powers are to be suspended until the whole of such capital has been subscribed: (*M'Dougall* v. *The Jersey Imperial Hotel Company*, 2 Hem. & M. 528; 34 L. J. 28.)

See also *Ornamental Pyrographic Wood Works Company* (2 H. & C. 63), and *The Howbeach Coal Company* v. *Teague* (5 H. & N. 151).

A clause in the Articles of Association of a Company provided that in case the whole of the shares into which the nominal capital of the Company was divided should not be subscribed for or allotted, the registered members of the Company for the time being should, if the directors should by resolution so declare, be and continue associated for the objects thereof, and the regulations for the management of the

Company should be in force and binding on such members in like manner as if the whole of the shares into which the nominal capital was divided had been subscribed for and allotted, and that the business of the Company might be commenced from that time. It was held, that until the whole of the capital was subscribed for or allotted, or the directors had passed a formal resolution for continuing the Company, the directors had no power to make a call, and a call so made could not be recovered against a shareholder: (*North Stafford Steel, Iron, and Coal Company (Burslem) Limited* v. *Ward*, Law Rep. 3 Ex. 172.)

The payment to shareholders before any profits have been made of interest on the amount of capital paid up is illegal, and will be restrained by injunction: (*M'Dougall* v. *The Jersey Imperial Hotel Company*, 2 Hem. & M. 528; 34 L. J. Ch. 28; 10 Jur. N. S. 1043.)

A limited Company may become a shareholder in another limited Company if authorised by its own Memorandum and Articles of Association to do so: (*Re Barned's Banking Company, Ex parte The Contract Corporation*, Law Rep. 3 Ch. App. 105.) But see *The Joint Stock Discount Company* v. *Brown* (Law Rep. 3 Eq. 139, 150), and *Re Peruvian Railways Company* v. *International Contract Corporation's case* (W. N. 1869, p. 124).

As to a banking Company being held liable as a contributory in the winding-up of a Company whose shares it had taken and dealt with, although it had no power by its Articles of Association or bye-laws to take shares in a Company, see *Re Asiatic Banking Corporation, Ex parte Royal Bank of India*, W. N. 1868, p. 304.

It has been held that this act does not confer on all Companies registered under it a power of issuing negotiable instruments; but that such a power exists only where upon a fair construction of the Memorandum and Articles of Association it appears that it was intended to be conferred: (*Peruvian Railways Company* v. *Thames and Mersey Marine Insurance Company, Re Peruvian Railways Company*, Law Rep. 2 Ch. App. 617. But where the Company has the power of accepting bills of exchange, a *bonâ-fide* holder of bills accepted by the Company is not bound to inquire whether they have been so accepted in accordance with the provisions of the Articles of Association: (*Re Blakely Ordnance Company, Ex parte Mercantile and Exchange Bank*, W. N. 1867, p. 147.)

It is competent to a Company, established for trading purposes, to give a bill of sale as a security for goods sold to, or work done for, them; and an affidavit filed with a bill of sale so given describing the Company by its name, "The Glucose Sugar and Colouring Company," and stating the address of its principal office, is a sufficient compliance with sect. 1 of "The Bills of Sale Act" (17 & 18 Vict. c. 36): (*Sheares* v. *Jacob*, Law Rep. 1 C. P. 513.)

See also *Deffell and Another* v. *White*, Law Rep. 2 C. P. 144.

The principle of equity, that what is agreed to be done is considered as done, applies equally to Companies as to individuals. Therefore, where the directors of a Company had authority to create a charge upon the assets, and with the intention of creating such a charge entered into an agreement, but the bonds given did not carry out the intention, it was held, that the court would give effect to the intention: (*Re Strand Music Hall Company*, 14 W. R. 6; 3 De G. J. & S. 147, on appeal.)

A Company may be treated as having *quâ* Company been guilty of fraudulent misrepresentation: (*Re The Life Association of England, Ex parte Blake*, 34 L. J. Ch. 278.) See *infra*.

If a case of fraud is alleged in respect of the formation of a Company,

it seems it must be set up by a bill in equity, and not by proceedings under a winding-up order: (*Re British and Foreign Cork Company, Leifchild's case*, Law Rep. 1 Eq. 231; 11 Jur. N. S. 941; 13 L. T. N. S. 267.)

Contracts by Companies.

As regards contracts to take shares, see sect. 23, *infra*.

No contract or agreement entered into by the promoters of a Company will bind the Company after incorporation, unless it is embodied in the Articles of Association constituting the Company, or is adopted by it after its incorporation: (see *Pilbrow* v. *Pilbrow's Atmospheric Railway Company*, 5 C. B. 440; *Parsons* v. *Spooner*, 5 Ha. 102; *Terrall* v. *Hutton*, 4 Ho. Lords Cas. 1091; and *Gun* v. *London and Lancashire Fire Insurance Company*, 12 C. B. N. S. 694.)

The Articles of Association of a Company provided for the payment of 5500*l.* to A., who was described as the promoter of the Company, for his trouble and expense in getting up the Company. A. was, in fact, a mere nominee on behalf of P. and others, who were the real promoters, and who were to receive the money. Some of the money not having been paid, an action was brought against the Company in the name of A. to recover the unpaid balance. The directors filed a bill in the name of the Company to restrain the action, and the allegations in this bill showed that the persons by whose directions it was prepared were fully aware of the fact that A. was only a nominee, and that P. and others were to receive the promotion money. The action and the suit were ultimately compromised by the directors giving to P. deposit-notes or bills for a sum in satisfaction of his claim. These not having been duly paid, P. presented a petition to wind-up the Company, and the matter was again compromised by the payment of 500*l.* to P. The Company was soon afterwards ordered to be wound-up on another petition. The official liquidator having claimed repayment of the 500*l.* from P., it was held (reversing the decision of the Master of the Rolls) that the compromise was binding on the Company, as the bill filed by the Company showed that they knew all the facts of the case and the compromises, and there had, therefore, been a ratification by the Company of the agreement with P.: (*Re General Exchange Bank, Preston's case*, W. N. 1868, p. 193; 16 W. R. Ch. 1097.)

As to the making, accepting, or indorsing of promissory notes or bills of exchange on behalf of companies under this act, see sect. 47, *infra*, and the notes under it.

Such Companies have the power of issuing negotiable instruments only, where, on a fair construction of the Memorandum and Articles of Association, it appears that it was intended to be conferred: (*Peruvian Railways Company* v. *Thames and Mersey Marine Insurance Company, Re Peruvian Railways Company*, Law Rep. 2 Ch. App. 617.)

As to contracts on behalf of any Company under this act, made since the 1st of September, 1867, see "The Companies Act, 1867," s. 37, *post*. But, owing to the absence of any provision on the subject in this act, except sect. 47, *infra*, contracts made under this Act, previously to that time are governed by the same rules that apply to those of a corporation aggregate at common law. The general rule, subject to certain exceptions, is that a corporation can only contract by an instrument under its corporate seal: (*Broughton* v. *The Manchester and Salford Waterworks Company*, 3 B. & Ald. 1; *Finlay* v. *The Bristol Railway Company*, 7 Exch. 409; *Gibson* v. *The East India Company*, 5 Bing. N. C. 262; *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815; *Smart* v. *West Ham Union*,

10 Exch. 867; and *London Dock Company* v. *Sinnot*, 8 E. &. B. 347.) With regard to the application of the rule in equity, see *Taylor* v. *Dulwich Hospital* (1 P. W. 655), *Winne* v. *Bampton* (3 Atk. 473), *Carter* v. *Dean of Ely* (1 Sim. 211), and *Preston* v. *The Liverpool Railway Company* (17 Beav. 114; 5 Ho. Lords Cas. 605).

There are numerous exceptions, however, to the rule, and in a recent case (*South of Ireland Colliery Company* v. *Waddle*, Law Rep. 3 C. P. 463) in which the decisions on the subject were fully reviewed, the principle was clearly laid down that, where a corporation is established for the purpose of trading, it may make valid and binding contracts without the formality of a seal in all cases relating to the objects and purposes for which the corporation was created, and that the magnitude or insignificance of the subject matter is not an element in deciding on such cases.

In that case a Company incorporated under this act for the working of collieries contracted with an engineer for the erection of a pumping-engine and machinery, and paid him part of the price. In an action by the Company against the engineer for a breach of contract in refusing to deliver the engine and machinery, it was held that the action was maintainable, though the contract was not under seal.

See also *Henderson* v. *The Australian Royal Mail Steam Navigation Company* (5 E. & B. 409; 24 L. J. 322, Q. B.), *Clarke* v. *Cuckfield Union* (1 B. C. C. 85; 21 L. J. 349, Q. B.), *Church* v. *The Imperial Gas Light Company* (6 A. & E. 846), *Beverley* v. *The Lincoln Gas Company* (6 A. & E. 829), *Denton* v. *East Anglian Railway Company* (3 Car. & Kir. 16), *Nicholson* v. *Bradfield Union* (Law Rep. 1 Q. B. 620): but see *The London Dock Company* v. *Sinnot* (8 E. & B. 347), in which an unsealed agreement was held invalid.

As to a court of equity enforcing unsealed contracts with a Company where there has been part performance, see *The London and Birmingham Railway Company* v. *Winter* (Cr. & Ph. 57), *Earl of Lindsey* v. *Great Northern Railway Company* (10 Ha. 675), *Wilson* v. *West Hartlepool Railway Company* (34 Beav. 187; 2 De G. J. & S. 475), *Marshall* v. *The Corporation of Queensborough* (1 Sim. & Stu. 520), *Maxwell* v. *Dulwich College* (7 Sim. 222), and *Stevens's Hospital* v. *Dyas* (15 Ir. Ch. 405).

As to the effect of a judgment obtained against a Company upon an unsealed agreement, see *Williams* v. *St. George's Harbour Company* (2 De G. & J. 547; 27 L. J. Ch. 691; 4 Jur. N. S. 1066), and *Hulett's case* (2 J. & H. 306).

A Company contracts by means of its directors and other duly authorised agents. But, it cannot by any means be bound where the contract is beyond the powers (*ultra vires*) of the Company, as set forth in its Memorandum and Articles of Association.

As to persons dealing with the directors or other agents of a Company being bound to make themselves acquainted with the actual limits set to their authorities by the regulations of the Company, see note under sect. 14, *supra*, and *Ernest* v. *Nichols* (6 Ho. Lords Cas. 419), *Royal British Bank* v. *Turquand* (6 E. & B. 327; 25 L. J. Q. B. 317; 2 Jur. N. S. 663), *Athenæum Life Insurance Society* v. *Pooley* (3 De G. & J. 294), *Greenwood's case* (3 De G. M. & G. 459), *Agar* v. *The Athenæum Life Insurance Society* (3 C. B. N. S. 725), *Balfour* v. *Ernest* (5 C. B. N. S. 601), and *Ex parte the Eagle Company* (4 Kay & J. 549).

The Directors of a Company as Agents.

The directors of a Company under this act, where the concern is a trading one, have all the powers that the Company itself has in

the way of contracting, borrowing, or otherwise, except so far as these powers are controlled or limited by the Memorandum or Articles of Association.

As to the appointment and acts of directors and managers being deemed valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications, see sect. 67, *infra*.

See sects.. 41 and 42, *infra*, as to the penalties incurred by directors, managers, and other officers of a Company, who carry on the business without duly publishing the name of the Company, or who sign documents on its behalf without duly mentioning its name in them.

As to the position of directors generally, see note under sect. 14, *supra*.

Where the Articles of Association do not prescribe the number of directors required to form a quorum, the number who usually act in conducting the business of the Company will constitute a quorum : (*Re Tavistock Ironworks Company, Lyster's case*, Law Rep. 4 Eq. 233, *ante*.) And in the case of a Company governed by Table A., in the first schedule to this act, the directors may delegate their powers to a few, and even to one only of themselves, and such a delegation will be presumed if one or two directors act for the Company in a matter within the scope of the Company's powers : (*Totterdell* v. *Fareham Brick Company*, Law Rep. 1 C. P. 674.)

But see *Re Leeds Banking Company, Howard's case*, Law Rep. 1 Ch. App. 561 ; 36 L. J. Ch. 42.

Where the Articles of Association lay down regulations, as to the meetings or otherwise of the directors, these regulations must be complied with.

In the case of *Darcy* v. *The Tamar, Kit Hill, and Callington Railway Company* (Law Rep. 2 Ex. 158), it was held that directors exercising the powers given by "The Companies Clauses Consolidation Act, 1845" (8 Vict. c. 16), must act together and as a board.

The quorum of directors in this Company, as prescribed by their special act, being three, the secretary affixed the seal of the Company to a bond after having obtained the written authority of two directors at a private interview, and at another private interview the verbal promise of a third to sign the document subscribed by the other two. On the Company being sued on this bond, it was held not liable on the ground that the seal was affixed without lawful authority, as it should have been affixed by the authority of the directors meeting together as a board.

See also *Re Regent's Canal Iron Company*, W. N. 1867, p. 79.

See as to directors irregularly exercising their powers as agents, *Royal British Bank* v. *Turquand* (5 E. & B. 248 ; 6 E. & B. 327 ; 24 L. J. Q. B. 327 ; 25 L. J. Q. B. 317), *Agar* v. *Athenæum Life Assurance Society* (3 C. B. N. S. 725 ; 27 L. J. C. P. 95), and *Smith* v. *Hull Glass Company* (11 C. B. 897).

As to the public in dealing with the agents of a Company being bound to take notice of the regulations of the Company, see note under sect. 14, *supra*.

In the case of *Marshall* v. *The Glamorgan Iron and Coal Company* (Law Rep. 7 Eq. 129) specific performance was decreed against a Company of an agreement by directors to cancel shares then standing in the name of the plaintiff.

When directors enter into an agreement that a Company will do that which is *ultra vires*, a court of equity will not decree specific performance : (*Ellis* v. *Colman*, 25 Beav. 662.)

An agreement that the call payable by a tradesman, who is a share-

holder in a Company, shall not be payable in cash, but only by set-off against goods supplied by him, is in general *ultra vires*: (*Re Richmond Hill Hotel Company, Pellatt's case*, Law Rep. 2 Ch. App. 527.)

See also *Re Masons' Hall Tavern Company, Habershon's case* (Law Rep. 5 Eq. 286), as to the set-off of a debt payable *in futuro* against a call.

The knowledge of a director that bills indorsed for value to his Company were bills which had been accepted for the accommodation of the drawer, the director not having been concerned on behalf of his Company in the transaction, in which the bills were indorsed to them, was held not to affect the Company with notice of the fact of their being accommodation bills: (*Peruvian Railways Company* v. *Thames and Mersey Marine Insurance Company, Re Peruvian Railways Company*, Law Rep. 2 Ch. App. 617.)

See *Re Fresh Provision Preserving Company, Worcester's case* (W. N. 1867, p. 62), where a Company was held bound by minutes signed by the chairman of a meeting of directors, agreeing to give a charge on their property, on the ground that he was a duly-authorised agent within the Statute of Frauds.

As regards the position of directors contracting on behalf of their company, Cairns, L. J., has expressed himself as follows: "They are merely agents of a Company. The Company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent. Wherever an agent is liable, those directors would be liable; where the liability would attach to the principal, and the principal only, the liability is the liability of the Company:" (*Ferguson* v. *Wilson*, Law Rep. 2 Ch. App. 89.)

Any representations made by the agents of a Company which form the foundation of a contract between that Company and a third person—those misrepresentations lying at the root of the contract—will entitle the other party to avoid the contract, and the Company must in that case take upon themselves the consequences of the misrepresentations of their agents. See the judgment of Vice-Chancellor Wood, *Henderson* v. *Lacon*, Law Rep. 5. Eq. 261.

In regard to frauds and fraudulent representations by the agents of a Company, the following principles have been laid down by Lords Chelmsford and Cranworth in the House of Lords: A Company cannot retain any benefit which they have obtained through the fraud of their agents, but they may be made responsible at law for the frauds of those agents *to the extent to which they have profited* from them, and the fact that the complainant is himself a member of the Company whose agents had committed the fraud would not be a valid objection to his suit in equity for a rescinding of his contract to take shares. A person so defrauded, however, cannot bring an action for *deceit* against the Company, and, if he wishes to pursue this remedy, he must bring his action against those who were guilty of the fraud personally. See *The Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L., Scotch App., 145.

Their Lordships thus seem to have considered that a party defrauded by the misrepresentations of directors into taking shares can obtain redress at law only to the extent to which the Company may have profited by the transaction, and that, if it had not made any such profit, the party deceived would be without remedy against the Company. Their Lordships, too, seem to have thought that the proper form of action would be for money had and received: (*Ib.* 158, 167.)

See, however, *Barwick* v. *The English Joint-Stock Bank* (Law Rep. 2 Ex. 259), *infra*, where the Court of Exchequer Chamber held that a Company would be liable for the fraudulent misrepresentations of their agent, as in general a principal is liable for the torts of his agent acting in the course of his employment. The court also held that such misrepresentation, supposing it to have taken place, would be properly described in common-law pleading as the misrepresentation of the Company. Willes, J., when delivering the judgment of the court, seemed to think that an action for deceit would be still more appropriate than one for money had and received. The opinions of the common-law judges thus appear to be at right angles with the dicta of Lords Chelmsford and Cranworth in *Addie's case*, and of Lord Westbury in the case of *The New Brunswick Company* v. *Conybeare* (9 Ho. Lords Cas. 711). As no part of the decision in the House of Lords, however, necessarily involves a principle inconsistent with the ruling in *Barwick's case* (which is distinctly in point with the question whether a Company is bound by the misrepresentations of its agents or directors), the latter decision may be fairly considered a safer guide to the law on this point than the dicta contained in the judgment in *Addie's case*.

The directors of a Company are responsible for the acts of workmen employed by the Company, as a master is responsible for the acts of his servant which are done in the execution of his duty. Where the workmen employed on the works of a Company, in the manufacture of certain foils and sheet metals, infringed, in the carrying out of the process upon which they were employed, the plaintiff's patent for a certain method of combining lead and tin, for a metal so produced, it was held that the directors and managers, as well as the Company, were personally liable for the acts of the workmen, even on the supposition that the workmen had been directed by them not to infringe the plaintiff's patent: (*Betts* v. *De Vitre*, Law Rep. 3 Ch. App. 429; 37 L. J. Ch. 325; 18 L. T. N. S. 165.)

As to whether directors who exceed their powers in contracting can, like other agents, be made personally liable in damages for having arrogated to themselves an authority which they do not in fact possess, see *Wilson v Miers*, 10 C. B. N. S. 348.

Directors and other agents may be made personally liable to those whom they have induced by false representations to contract with their Company, and that both in equity and at common law.

In the case of *Henderson* v. *Lacon* (Law Rep. 5 Eq. 249), where the plaintiff, in a bill in equity, obtained a decree against the directors of a Company and against the Company, on the ground of misrepresentation in the prospectus, for repayment of the deposit and allotment money paid on his becoming a shareholder, with costs of the suit, Vice-Chancellor Wood thus spoke of the position of agents inducing people by false representations to contract with their Company: "If you are to make them personally liable for the consequences of their misrepresentations, not they but the party for whom they contracted pocketing the proceeds—as in this instance the Company, for whom the directors may be taken to be acting as agents—you must fix them also with a guilty knowledge of the misrepresentation which is communicated to the person who is to be led into the contract. If you do not fix them with what is technically called the *scienter*, upon an action of deceit, you cannot fix them personally with the consequences of the injury or damage that may result to the plaintiff who has been so deceived."

See also *Hallows* v. *Fernie*, Law Rep. 3 Ch. App. 467; 18 L. T. N. S. 340.

A shareholder in a Company filed a bill in equity against it and the directors, for a decree cancelling an allotment of shares to him, on the ground of fraud and misrepresentation on the part of the directors, and for repayment of his deposit by the defendants generally, or, in the alternative, that if he was held to be a shareholder, the directors should indemnify him against all the consequences thereof. The directors demurred to the bill for want of equity; and it was held that the demurrer should be overruled: (*Ogilvie* v. *Currie*, 16 L. T. N. S. 309, Ch.)

On the case afterwards coming to a hearing, it appeared that the plaintiff became a shareholder in June, 1865, upon the faith of certain statements in the prospectus. Towards the end of 1865, he began to suspect that all was not right. In April, 1866, a committee of inquiry was appointed, and on May 30, 1866, by his own account, he learned the untruth of the prospectus. He took no steps towards repudiation until July 21, 1866, when he served the directors with a notice of repudiation, and his bill was not filed until March 23, 1867. By that time the Company had commenced winding-up. It was held that, as between the plaintiff and the Company, the case was one of an affirmance by the plaintiff of a contract which, at most, was a voidable contract. And as between the plaintiff and the directors, that inasmuch as his own *laches* had fixed him on the list of contributories, he could not maintain his suit against the directors to indemnify him against the consequences: (*The Same* v. *The Same*, 37 L. J. Ch. 541; 16 W. R. 769; 18 L. T. N. S. 593, Ch.)

As to the criminal responsibility of directors, managers, and other agents of a Company, see sects. 166, 167, and 168, *infra*.

Where they have circulated false prospectuses and reports with a view to induce people to take shares, they may also be made answerable in damages to those who take shares on the faith of such reports (*Burnes* v. *Pennell*, 2 Ho. Lords Cas. 497; *Gerhard* v. *Bates*, 2 E. & B. 476; *Denton* v. *Great Northern Railway Company*, 5 E. & B. 860; and *Williams* v. *Swansea Harbour Trustees*, 14 C. B. N. S. 845): and an action for deceit may be brought although there was no immediate communication between the plaintiff and the defendant: (*Clarke* v. *Dickson*, 6 C. B. N. S. 453; *Bedford* v. *Bagshaw*, 4 H. & N. 538; and *Bale* v. *Cleland*, 4 Fos. & Fin. 117.) See also *Cullen* v. *Thomson* (4 Macq. 424; 9 Jur. N. S. 85, In Dom. Proc.), where it was laid down that even servants of a Company directly concerned in the commission of a fraud would be liable.

Directors as Trustees.

The directors of a Company are, in point of law, trustees as regards the shareholders, and a shareholder may sustain a bill in equity against directors personally, when he charges them as trustees and seeks redress against them for a breach of trust to the Company of which he is a member: (*Ferguson* v. *Wilson*, Law Rep. 2 Ch. App. 90. Cairns, L.J.)

Where loss was occasioned, first, by continuing the business of a Company without calling a meeting to consider the propriety of dissolving it; secondly, by advances to the directors—both of such acts being contrary to express provisions of the deed of settlement of the Company—it was held that the directors who so neglected the provisions of the deed of settlement were liable, in a suit instituted by the official liquidator, to make good the loss.

Directors who neglect the rules of a Company are liable to make good to the shareholders any loss occasioned thereby; and their liability in this respect does not differ from that of ordinary trustees. Where,

therefore, directors might have learned from the books of the Company the true state of its affairs, it was held that, although in fact they were ignorant of the state of affairs, their ignorance was no defence in a suit instituted for the purpose of compelling them to make good losses occasioned by their neglecting to take the steps which, by the provisions of the deed of settlement, they ought to have taken under the circumstances: (*Turquand* v. *Marshall*, Law Rep. 6 Eq. 112.)

See also, as regards breaches of trust by directors, *The Bank of Turkey* v. *The Ottoman Company* (Law Rep. 2 Eq. 366; 14 L. T. N. S. 545), and *The Joint-Stock Discount Company* v. *Brown* (Law Rep. 3 Eq. 139, *infra*).

See *Re Anglo-Greek Steam Navigation and Trading Company* (35 Beav. 399) for observations as to the impropriety of directors receiving gifts from the projector out of the promotion moneys received by him from the Company. A benefit received by a director from persons employed by the Company, or arising from the transactions of the Company, cannot be supported. It is not only the duty of directors of Companies to be ready, at all times, to explain everything to shareholders, but also that they shall be engaged in no transactions connected with the Company from which they can derive a profit which is not openly known to, and acquiesced in, by all the shareholders.

A contract between a director and his Company will not bind the Company in a court of equity, unless all the circumstances relating to it are fully and clearly explained to the members of the Company: (*The Aberdeen Railway Company* v. *Blaikie*, 1 Macq. 461.)

See also *Re Central Darjeeling Tea Company, Ex parte Cornish* (W. N. 1867, p. 147), and *Flanagan* v. *The Great Western Railway Company* (Law Rep. 7 Eq. 116).

As to a claim by a director of a Company established under the Joint-Stock Companies Act, 1844, for advances made to meet the necessary expenses of carrying on the concern, see *Lowndes* v. *The Garnett and Moseley Gold Mining Company*, 33 L. J. Ch. 418.

See *Hagell* v. *Currie* (W. N. 1867, p. 84) as to a suit instituted by a shareholder on behalf of himself and the other shareholders against the directors and the Company, as defendants, to make the directors answerable for profits alleged to have been made by them on certain purchases on behalf of the Company.

Where directors of a Company, when amalgamating with another Company, received from the latter a sum of money as compensation, and withheld knowledge of the transaction from their members, they were held to be trustees of the money for their members, and were ordered to pay it into court: (*Gaskell* v. *Chambers*, 26 Beav. 360.)

Where an *ultra vires* and improper payment was made to a promoter of a Company all the directors who were present at a meeting of the directors, at which the cheques for the money in question were drawn and given to a solicitor to be handed to the promoter, were ordered to refund the money. At a second meeting the solicitor reported he had given the cheques; and at a third meeting the minutes of the two former meetings were read: it was held that a director who was present at the second and third meetings could not be made liable for not having taken steps to rescind the act of his co-directors or to stop the payment of the cheques: (*Re Reese River Silver Mining Company*, W. N. 1867, p. 139.)

Shareholders in a Company cannot lie by, sanctioning, or by their silence at least acquiescing in, an arrangement which is *ultra vires* of the

Company, watching the results; and if it be favourable and profitable to themselves, to abide by it and insist on its validity; but if it prove unfavourable and disastrous, then to institute proceedings to set it aside. Therefore, where shareholders complained of acts *ultra vires*, which they had acquiesced in for six years, relief was refused.

In matters strictly relating to the internal management of a Company the court, though it should come to the conclusion that the course adopted is not warranted by the terms of the Company's deed, will not interfere, even though the minority should have summoned a meeting of all the shareholders, and the majority should have persisted in the course complained of. But if the measures adopted are plainly beyond the powers of the Company, and are inconsistent with the objects for which the Company was constituted, then the court will, at the instance of the minority, interpose to prevent the performance of the act complained of, and it will do so whether an appeal has or has not been made by the minority to the shareholders generally.

The court will interfere to prevent the directors of a railway Company, not having powers so to do, from embarking the funds of the Company in carrying on a brewery or a steamboat Company, and from speculating in the purchase or sale of stock, and from transferring their business to another Company. But it will not interfere to prevent a call not required, or stop a dividend not justified by the pecuniary condition of the Company, though it will prevent the illegal apportionment of the dividends amongst the shareholders.

Where the court interferes by injunction to prevent the performance, by the directors of a Company, of an act *ultra vires*, it will also, to the extent of its power, redress the act performed and give relief to the persons injured thereby, although it is not called upon to dissolve the Company or wind-up its affairs.

In the present case, the only available property of the Company was transferred to two shareholders in lieu of their shares, and the Company was thereby practically put an end to, and the debts were thrown on the remaining shareholders. This was sanctioned by a majority of the shareholders at a general meeting: it was held, that the majority could not bind the minority in such a transaction, and it was set aside.

The Company was held, under the circumstances, not a necessary party to a suit to impeach acts of its directors: (*Gregory* v. *Patchett*, 33 Beav. 595; 10 Jur. N. S. 1119, Ch.; 11 L. T. N. S. 357.)

The plaintiff by his bill prayed the specific performance of a resolution passed by the board of directors of a Company, under which he alleged that he was entitled to have a certain number of shares allotted to him; and he also prayed that if it should appear that all the shares had been allotted to other shareholders, the directors might indemnify him out of their own shares, or might be charged with damages. All the shares had been allotted before the filing of the bill. It was held that as no relief by way of specific performance was possible, the plaintiff's claim for damages under Sir H. Cairns's Act (21 & 22 Vict. c. 27) failed also.

In such a case the plaintiff's claim against the directors to be indemnified out of their shares was only a claim for damage in another form: (*Ferguson* v. *Wilson*, Law Rep. 2 Ch. App. 77; 36 L. J. Ch. 67; 12 Jur. N. S. 912; 15 L. T. N. S. 230.)

See sect. 165, *infra*, as to the power of the court, in a winding-up, to make directors or managers liable for any breach of trust committed by them in relation to the Company.

But notwithstanding that section, leave was given to a shareholder, after the making of a winding-up order, to proceed with a suit against the Company and certain directors, and make the directors personally liable for misapplying the moneys of the Company: (*Philips* v. *Ottoman Financial Association*, *Re Ottoman Financial Association*, W. N. 1867, p. 107.)

(*e*) *By the name contained in the Memorandum of Association.*]—See sect. 13, *supra*, as to the power of a Company under this act to change its name.

(*f*) *Capable of exercising all the functions, &c.*]—As soon as a Company has been registered under this act, it may perform all acts necessary for carrying into effect the purposes of the Company, and it may then both sue and be sued by its registered name.

Companies incorporated under this act, and incorporated Companies to which this act applies (see sects. 175—178), except as herein mentioned, sue and are sued in the same way as corporations aggregate.

By sect. 72, *infra*, any Company under this act may refer to arbitration any differences, questions, or other matters whatsoever in dispute between itself and any other Company or person.

By sect. 69 of this act, a plaintiff Company may be required to give security for costs.

When the winding-up of a Company has once commenced, the official liquidator, in the case of a compulsory winding-up, and the liquidators in a voluntary winding-up have power to bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company. See respectively sects. 95 and 133, *infra*.

And by sect. 160, *infra*, they have power to compromise debts, &c., and all questions in any way relating to or affecting the assets of the Company, or its winding-up.

As to the effect of a winding-up, on actions or suits against a Company, see sects. 85, 87, and 163, *infra*.

Suing at Law.

A Company must sue in its registered name and by attorney, who should be appointed under the common seal of the Company (*Arnold* v. *The Mayor, &c., of the Borough of Poole*, 4 M. & G. 860); but as to the power of an attorney not appointed under seal to bind a corporation, see *Flaviell* v. *The Eastern Counties Railway Company* (2 Exch. 344).

It was held that a railway Company might have discovery of documents under the 50th section of "The Common Law Procedure Act, 1854," upon the affidavit of their attorney, it being impossible for them literally to comply with the terms of that provision, and it being the intention of the Legislature that its benefit should be extended to all suitors. And the case of *Christopherson* v. *Lotinga* (15 C. B. N. S. 809) was distinguished: (*Kingsford* v. *The Great Western Railway Company*, 16 C. B. N. S. 761; 33 L. J. C. P. 307.)

As to actions by Companies against their shareholders for calls, see sect. 70, *infra*.

A Company may, of course, sue on a contract it has made if the contract be a valid one at law.

As to the law regulating the contracts of Companies, see *supra*.

Where, however, a Company under this act has contracted since the

1st of September, 1867, the contract comes within the provisions of sect. 37 of "The Companies Act, 1867," *post*.

It has been held that a Company might maintain an action for libel against one of its shareholders: (*The Metropolitan Saloon Omnibus Company* v. *Hawkins*, 4 H. & N. 87; 28 L. J. Ex. 201.)

Suing in Equity.

A Company must sue in equity as well as at law by its corporate name.

The court will order security to be given for costs (see sect. 69, *infra*) on an affidavit being made showing reasonable grounds for supposing that the Company cannot pay the costs, in the absence of any evidence to the contrary: (*Isle of Wight and Southampton Steamboat Company* v. *Rawlins*, 9 Jur. N. S. 887; 2 N. R. 544.)

Where a Company or corporation is plaintiff in a suit in equity, the defendant cannot, under sect. 19 of 15 & 16 Vict. c. 86, file interrogatories for the examination of its officers when they are not parties to the suit: (*Imperial Mercantile Credit Association* v. *Whitham*, Law Rep. 3 Eq. 89; 12 Jur. N. S. 898; 15 L. T. N. S. 203.)

An injunction will not be granted on the application of a limited Company without the undertaking of some responsible person to be answerable in damages: (*The Anglo-Danubian Steam Navigation and Colliery Company* v. *Rogerson*, 10 Jur. N. S. 87, M. R.)

As to suits instituted by Companies against parties who have improperly obtained possession of moneys belonging to them, see *Bryson* v. *Warwick and Birmingham Railway Company* (4 De G. M. & G. 711), *Ernest* v. *Croysdill* (2 De G. F. & J. 175), and *Grimes* v. *Harrison* (26 Beav. 435).

In a suit on behalf of Company A., praying relief on the footing that a payment for promotion money made by their directors to Company B. was a breach of trust, the court refused to restrain Company B. (which was a limited Company being voluntarily wound-up) by interlocutory injunction from dealing with the money or dissolving the Company; the right to such money being the question to be decided at the hearing, and there being no admission of a trust so as to entitle the plaintiffs to an order for payment of the money into court: (*Bank of Turkey* v. *Ottoman Company*, Law Rep. 2 Eq. 366; 14 L. T. N. S. 545.)

Where a bill was filed by the official liquidator of a Company against their late directors, stating a transaction whereby, in consideration of the payment of moneys belonging to the Company by means of cheques drawn by two of the directors, certain shares in a banking Company were transferred into the names of some of the directors as nominees of the Company, and alleging that this transaction was *ultra vires*, and was concealed from the Company by false descriptions in the Company's books, it was held, on demurrer by one of the defendants, that whatever might be the force of the argument as to the validity of the transaction under the Company's powers, the charges in the bill as to concealment must be answered, and the demurrer was overruled: (*Joint-Stock Discount Company* v. *Brown*, Law Rep. 3 Eq. 139.)

See also *Turquand* v. *Marshall*, Law Rep. 6 Eq. 112.

A Company can maintain a petition for adjudication under sect. 87 of "The Bankruptcy Act, 1861," and the secretary may make the necessary oath. In such cases the practice is for the petition to be sealed with the corporate seal, and signed by two directors and the secretary: (*Re Calthrop*, Law Rep. 3 Ch. App. 252.)

Being sued at Law.

A corporation should be sued in its corporate name. By the 2 Will. 4, c. 39, ss. 21, 22, 23, the process against corporations to enforce their appearance in a personal action is the same as in ordinary cases.

As to the service on a corporation of the writ of summons, see "The Common Law Procedure Act, 1852," s. 16.

By sect. 51 of "The Common Law Procedure Act, 1854," in all causes in any of the Superior Courts, interrogatories in writing, upon any matter as to which discovery may be sought, may be delivered to any of the officers of a body corporate. It has been held that the directors of a Company are officers within the meaning of the act: (*Inchbald* v. *Western Neilgherry Tea Company*, *coram* Willes, J., at Chambers, 26th Feb., 1864.) See the next case.

In an action against a Company the court or a judge has power under the 14 & 15 Vict. c. 99, s. 6, and the 17 & 18 Vict. c. 125, s. 50, to order a director of the Company to allow inspection of their documents in his possession.

An affidavit of a director, in answer to an attachment for disobedience of such an order, stated that he had not on the day the order was made, or at any time since, the documents in his possession, custody, or power, and that ever since the order was made it had been out of his power to comply with it: it was held that the affidavit was insufficient; and the court ordered the director to be examined *vivâ voce* before a master, under the provisions of the 46th section of "The Common Law Procedure Act, 1854:" (*Lacharme* v. *The Quartz Rock Mariposa Gold Mining Company*, 1 H. & C. 134; 31 L. J. Ex. 508.)

Where the plaintiff in a cause, who had obtained a judgment against an incorporated Company, applied under sect. 60 of "The Common Law Procedure Act, 1854" (17 & 18 Vict. c. 125), for an order to examine certain of the directors as to what debts were owing to the Company, with the view of attaching such debts to meet the judgment-debt, it was held that where a corporation is the "judgment-debtor" the above-mentioned section does not apply: (*Dickson* v. *The Neath and Brecon Railway Company*, W. N. 1869, p. 20.)

As to the service of notices on Companies, see sects. 62 and 63, *infra*.

A Company may, of course, be sued on a contract, if the contract be a valid one at law.

As to the law regulating the contracts of Companies, see *supra*.

Where, however, a Company under this act has contracted since the 1st of September, 1867, the contract comes within the provisions of sect. 37 of "The Companies Act, 1867."

The plaintiff was retained, by resolution of the directors of a public Company, as broker, to dispose of the shares therein, upon the terms that he was to receive 100*l*. down, and 400*l*. more when all the shares should have been allotted. By the act of the directors, without any default on the part of the plaintiff, the Company was wound-up before the whole of the shares had been disposed of; and it was held, that the plaintiff was entitled to recover, as damages for the breach of contract such sum as a jury (or the court substituted for a jury) should think reasonable: (*Inchbald* v. *The Western Neilgherry, Coffee, &c., Company*, 17 C. B. N. S. 733; 34 L. J. C. P. 15; 11 Jur. N. S. 1129; 11 L. T. N. S. 345.)

With regard to torts, an action of trover is sustainable against a corporation, also an action for a false return (*Yarborough* v. *The Bank of England*, 16 East, 6); or for a distress (*Smith* v. *Birmingham and Staffordshire Gas Company*, 1 Ad. & E. 526); and also for trespass (*Maund* v. *Monmouth Canal Company*, 2 Dowl. N. S. 113; 4 Man. & G. 452); and for negligence (*Cowley* v. *Mayor of Sunderland*, 6 H. & N. 565). Trespass for assault will lie: and a corporation is liable for a libel published by its order: (*Whitfield* v. *South Eastern Railway Company*, E. B. & E. 115; 27 L. J. Q. B. 229.)

A corporation may be liable for intentional acts of misfeasance by its servants, provided the acts are connected with the scope and object of its incorporation; as (where the defendants were a Company established for conveying passengers in omnibuses) for wilfully molesting the plaintiff's carriages on the highways, by driving the defendants' carriages so as to obstruct the plaintiff in the use of his: (*Green* v. *London General Omnibus Company*, 7 C. B. N. S. 290; 29 L. J. C. P. 13.)

As to whether an action for malicious prosecution will lie, see *Lawson* v. *Bank of London* (25 L. J. C. P. 188; 18 C. B. 84), and *Stevens* v. *Midland Railway Company* (10 Exch. 352; 29 L. J. Ex. 328).

And an action was maintained against a corporation for keeping a mischievous dog, accustomed to bite, with knowledge of his propensities: (*Stiles* v. *Cardiff Steam Navigation Company*, 33 L. J. Q. B. 310; 4 N. R. 483, Q. B.)

An action may be brought against a Company for the fraudulent misrepresentation of their agent acting in the course of his business.

The plaintiff having for some time, on the guarantee of the defendants, a banking Company, supplied J. D., a customer of theirs, with oats on credit, for carrying out a government contract, refused to continue to do so unless he had a better guarantee. The defendants' manager thereupon gave him a written guarantee to the effect that the customer's cheque on the bank in plaintiff's favour, in payment for the oats supplied, should be paid, on receipt of the government money, in priority to any other payment, "except to this bank." J. D. was then indebted to the bank to the amount of 12,000*l.*, but this fact was not known to the plaintiff, nor was it communicated to him by the manager. The plaintiff thereupon supplied the oats, to the value of 1227*l.*; the government money, amounting to 2676*l.*, was received by J. D., and paid into the bank; but J. D.'s cheque for the price of the oats, drawn on the bank in favour of the plaintiff, was dishonoured by the defendants, who claimed to retain the whole sum of 2676*l.* in payment of J. D.'s debt to them. The plaintiff having brought an action for false representation, and for money had and received, it was held, first, that there was evidence to go to the jury that the manager knew and intended that the guarantee should be unavailing, and fraudulently concealed from the plaintiff the fact which would make it so. Secondly, that the defendants would be liable for such fraud in their agent. And, thirdly, that the fraud was properly charged in the declaration as the fraud of the defendants: (*Barwick* v. *English Joint-Stock Bank*, Law Rep. 2 Ex. 259.)

A Company is affected by notice to its servants as to matters to which it is their duty to attend: (*Styles* v. *Cardiff Steam Navigation Company*, 4 N. R. 483, Q. B.; 33 L. J. Q. B. 310.)

See also *Re Carew's Estate Act* (31 Beav. 39), and *Worcester Corn Exchange Company* (3 De G. M. & G. 180).

Being sued in Equity.

Where a Company was restrained from infringing a patent, the directors of the Company were ordered to pay the costs of the suit: (*Betts* v. *De Vitre*, 5 N. R. 165; on appeal, Law Rep. 3 Ch. App. 429; 37 L. J. Ch. 325.)

A shareholder is competent to sue in equity, on behalf of himself and all the other shareholders (though some were assenting parties to the transaction) to have an *ultra vires* transaction of the Company set aside: (*Clinch* v. *Financial Corporation*, Law Rep. 5 Eq. 450; confirmed on appeal, W. N. 1868, p. 246.)

See also *Atwool* v. *Merryweather*, Law Rep. 5 Eq. 464.

The plaintiff, having lost money by speculating in the shares of a Company, purchased five shares, for the purpose of qualifying himself as a shareholder, and then filed a bill, on behalf of himself and the other shareholders, against the Company and other persons, impeaching certain transactions between them, on the ground of fraud. The bill also impeached certain preliminary proceedings which had been taken for the purpose of winding-up and reconstituting the Company. After the bill was filed, the Company was wound-up and reconstituted. The defendants put in answers which were excepted to for insufficiency, and, while the exceptions were pending, they moved to take the bill off the file, or to stay proceedings: it was held (affirming the order of Malins, V.C.), first, that at that stage of the cause, the defendants not having sufficiently denied the charges of fraud, the *mala fides* of the plaintiff in filing the bill was no ground for taking the bill off the file: secondly, that the small interest of the plaintiff was no objection to the bill, as it was filed on behalf of himself and other shareholders: thirdly, that as the bill impeached the preliminary proceedings in the winding-up, the fact of the Company having been wound-up subsequently was no ground for staying the proceedings: (*Seaton* v. *Grant*, Law Rep. 2 Ch. App. 459; 36 L. J. Ch. 638; 16 L. T. N. S. 758.)

A bill filed by one Company against a rival Company, alleging that they were acting *ultra vires* and contrary to the public interest, but alleging no private injury, is demurrable: (*The Stockport District Water-works Company* v. *The Mayor, &c., of Manchester*, 9 Jur. N. S. 266, Ch., on appeal; 17 L. T. N. S. 545.)

A Company may be treated as having as a Company been guilty of fraudulent misrepresentation: (*Re Life Association of England, Ex parte Blake*, 34 Beav. 639; 34 L. J. Ch. 278.)

Where directors entered into an agreement to cancel shares in a Company then standing in the plaintiff's name, which under the special powers contained in the articles they were empowered to do, specific performance was granted of the agreement against the Company after a winding-up had commenced: (*Marshall* v. *Glamorgan Iron and Coal Company*, Law Rep. 7 Eq. 129.)

See as to suits against Companies to rescind share taking contracts on the ground of fraud and misrepresentation, sect. 23, *infra*, especially the cases of *The Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L., Scotch App., 145; *The Directors, &c., of The Central Railway Company of Venezuela* v. *Kisch*, Law Rep. 2 H. L. 99; *Re Overend, Gurney & Co., Oakes* v. *Turquand*, Law Rep. 2 H. L. 325; and *Ross* v. *Estates Investment Company*, Law Rep. 3 Ch. App. 682.

Where a plaintiff—having been struck off the register of a Company by an order of the court, on the ground of excess in the objects of the

Company as shown by the memorandum registered after he became a member over those stated in a prospectus on the faith of which he took shares—filed a bill for the return of his deposit money against the directors who issued the prospectus and the Company, not alleging fraudulent intention, a demurrer by the Company was allowed on the ground that the money in their hands was not impressed with a trust: (*Stewart* v *Austin*, Law Rep. 3 Eq. 299.)

See also *Moseley* v. *Cressey's Company*, Law Rep. 1 Eq. 405; 12 Jur. N. S. 46.

Books and documents which are in the possession of a Company are for purposes of discovery in the possession or power of the directors.

In answer to an order against a Company, its directors, managing director, and secretary, for the production of documents, the directors filed affidavits stating that they had not in their possession or power any documents other than those which might be in the possession of the Company. They afterwards made further affidavits, in which they stated that they had no documents whatever in their possession or power: it was held that the affidavits were insufficient; and that the defendants were bound to give upon oath all the information in their power as to the documents in possession of their Company: (*Clinch* v. *Financial Corporation*, Law Rep. 2 Eq. 271; 12 Jur. N. S. 484.)

See also *Acomb* v. *The Landed Estates Company*, W. N. 1866, p. 87.

(*g*) *And a common seal.*]—By sect. 41 of this act, the name of the Company must be engraven in legible characters on its seal.

Stat. 27 Vict. c. 19, *post*, now enables joint-stock Companies carrying on business in foreign countries to have official seals to be used in such countries.

Although an instrument sealed with the common seal of a Company is *primâ facie* valid, yet if it be proved that the seal was affixed by a person having no authority for that purpose, the instrument is void as an act of the Company, see *Mayor of Colchester* v. *Lowton* (1 V. & B. 243, 244); and, as appears from the next case, the formalities prescribed by the regulations that govern the Company must be strictly observed.

The quorum of directors in a Company, as prescribed by their special act (which incorporated "The Companies Clauses Act, 1845"), being three, the secretary affixed the seal of the Company to a bond, after having obtained the written authority of two directors at a private interview, and at another private interview the verbal promise of a third to sign the document signed by the other two. On the Company being sued on this bond, it was held not liable on the ground that the seal was affixed without lawful authority, as it should have been affixed by the authority of the directors meeting together as a board: (*Darcy* v. *The Tamar, Kit Hill, and Callington Railway Company*, Law Rep. 2 Ex. 158.)

Where a Company prescribed no particular formalities either in its Memorandum of Association or in its Articles as to the mode in which, or the persons in whose presence, its seal should be affixed to any document, and the seal was affixed to a deed without any resolution of the board of directors, but by the direction of the three persons who had the chief management of the affairs of the Company, it was held that it must be considered to have been affixed by due authority: (*Re Barned's Banking Company, Ex parte the Contract Corporation*, Law Rep. 3 Ch. App. 105.)

See, also, *Totterdell* v. *The Fareham Blue Brick and Tile Company*, Law Rep. 1 C. P. 674; and *Shears* v. *Jacobs*, Law Rep. 1 C. P. 513.

The seal must be affixed with intent to render the instrument effectual, and it has been held that the affixing the common seal to the deed of conveyance of a corporation did not pass the estate when the order to affix the seal was accompanied with a direction to the Company's clerk to retain the conveyance in his hands until accounts were adjusted with the purchaser: (*Derby Canal Company* v. *Wilmot*, 9 East, 360.)

A bill of sale was executed under the common seal of a trading Company. Opposite the seal were the names of two of the directors, who purported to sign as directors. The secretary, who was called as a witness, stated that "it was usual to affix the seal in the presence of the board and for two directors to attest it." It was held that the directors signing as above were not "attesting witnesses" within the meaning of the Bills of Sale Act (17 & 18 Vict. c. 36): (*Sheares* v. *Jacob*, Law Rep. 1 C. P. 513.)

See also *Deffell* v. *White*, Law Rep. 2 C. P. 144.

(*h*) *With such liability on the part of the members, &c.*]—See sect. 38 of this act as to the liability of the present and past members of a Company.

The direct remedy of a creditor of an incorporated Company is solely against the Company and not against its individual members, as upon a contract with them. But though as between the Company and the member, the member might have a good legal or equitable defence to a call upon himself, he may be liable to contribute to the assets of the Company required for the payment of the Company's creditors: (*Oakes* v. *Turquand, Re Overend, Gurney, and Co.*, Law Rep. 2 H. L. 325.)

(*i*) *A certificate of the incorporation of any Company, &c.*]—When a Company changes its name under sect. 13, *supra*, the registrar must issue a new certificate of incorporation, altered to meet the circumstances of the case; and the change of name is not complete until the issue of this certificate: (*Shackleford, Ford, and Co.* v. *Dangerfield; Ib.* v. *Owen*, Law Rep. 3 C. P. 407.)

(*j*) *All the requisitions of this act, &c., have been complied with.*]—A Memorandum of Association of a Company, when brought to the office of the Registrar of Joint-Stock Companies for registration, was objected to by him as going beyond the prospectus, whereupon the bearer of it then and there, without any communication with the persons who had signed it, made alterations to remove the objections of the registrar, who at once registered it in the altered form. It was held that, although the conduct of the registrar, in knowingly registering a document which had been thus altered, was most censurable, the Company was duly constituted, the certificate of registration being, under this section, conclusive evidence that the requisitions of the act had been complied with: (*Re Barned's Banking Company, Peel's case*, Law Rep. 2 Ch. App. 674.)

"I think the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a Memorandum of Association by seven persons, and that it is conclusive in this case, that all previous requisites had been complied with": (*Oakes* v. *Turquand and Harding, Re Overend, Gurney, and Co.*, Law Rep. 2 H. L. 354. Lord Chelmsford, L.C.)

In an action against a Company, registered under 19 & 20 Vict. c. 47, for breach of contract to employ and pay for services, certificates for shares issued under its seal were held to be sufficient evidence of registration as against the Company: (*Mostyn* v. *Calcott, &c., Company*, 1 F. & F. 334.)

See *Banwen Iron Company* v. *Barnett*, 8 C. B. 406, and 19 L. J. C. P. 17.

See, also, *The Prince of Wales Assurance Society* v. *The Athenæum Insurance Society*, 3 C. B. N. S. 756, note.

19. *Copies of Memorandum and articles to be given to Members.*—A copy of the Memorandum of Association,(*a*) having annexed thereto the Articles of Association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the Company for each copy; and if any Company make default in forwarding a copy of the Memorandum of Association and Articles of Association, if any, to a member, in pursuance of this section, the Company so making default shall for each offence incur a penalty not exceeding one pound.

(*a*) *A copy of the Memorandum of Association, &c.*]—Sects. 8, 9, and 21 of "The Companies Act, 1867," *post*, confer on Companies under this act certain powers of modifying the conditions contained in their Memorandums of Association; and sects. 8, 18, and 22 of that act provide for corresponding alterations to be made in every copy of the Memorandum of Association issued after such modifications.

20. *Prohibition against identity of names in Companies.*—No Company shall be registered(*a*) under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the registrar requires; and if any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the registrar,(*b*) change its name,(*c*) and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

(*a*) *No Company shall be registered, &c.*]—A Company cannot, by user, acquire an exclusive right to use, in its title of incorporation, a general term descriptive merely of the locality with which the business carried on by the Company is connected; and the Court of Chancery will not restrain the use of such general term by a new Company, even though it be in evidence that the former Company may have been prejudiced by similarity of name: (*The Colonial Life Assurance Company* v. *The Home and Colonial Assurance Company*, 33 L. J. Ch. 741; 10 Jur. N. S. 967.)

An injunction moved for by "The London Insurance" to restrain a recently-constituted Company, registered under this act, from calling themselves "The London and Westminster Insurance Corporation," on the ground of similarity of title, was refused: (*The London Insurance* v. *The London and Westminster Insurance Corporation*, 9 Jur. N. S. 843, Ch.; 8 L. T. N. S. 497.)

(*b*) *With the sanction of the registrar.*]—Under sect. 13, *supra*, the approval of the Board of Trade is necessary before a Company can change its name; here the sanction of the registrar only is required.

(*c*) *Change its name.*]—As to a Company changing its name, see sect. 13, *supra*, and *Shackleford, Ford, and Co.* v. *Dangerfield* (Law Rep. 3 C. P. 407.)

21. *Prohibition against certain Companies holding land.*—No Company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain (*a*) by the Company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence (*b*) under the hand of one of their principal secretaries or assistant secretaries, empower any such Company to hold lands in such quantity and subject to such conditions as they think fit.

(*a*) *Not involving the acquisition of gain.*]—As to associations formed for purposes not of gain, see now "The Companies Act, 1867," s. 23.

(*b*) *By licence.*]—The form of the licence of the Board of Trade will be found in the second schedule to this act, Form F., *post.*

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

DISTRIBUTION OF CAPITAL.

22. *Nature of interest in Company.*—The shares (*a*) or other interest (*b*) of any member in a Company under this act shall be personal estate, (*c*) capable of being transferred in manner

provided by the regulations of the Company,(*d*) and shall not be of the nature of real estate, and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

(*a*) *The shares, &c.*]—By sect. 8, *supra*, the Memorandum of Association of a limited Company shall contain the amount of capital with which the Company proposes to be registered, divided into shares of a certain fixed amount. Shares may be fully paid up in money or in money's worth received by the Company, see *post*.

By sect. 25, *infra*, the register of members of a Company shall contain a statement of the shares held by each member, and of the amount paid or agreed to be considered as paid on such shares.

As to the effect of the conversion of shares into stock, see sects. 28 and 29, *infra*.

As to certificates of shares or stock to be issued by a Company, see sect. 31, *infra*.

By "The Companies Act, 1867," ss. 27—36, a Company limited by shares, if authorised so to do by its regulations as originally framed, or as altered by special resolution, may issue in the name of the bearer warrants of fully paid-up shares or of stock.

By sect. 12, *supra*, a limited Company may increase its capital by the issue of new shares of such amount as it thinks expedient; or it may divide its capital into shares of larger amount than its existing shares, and by "The Companies Act, 1867," ss. 21 and 22, such a Company may divide its shares into shares of smaller amount.

As to the effect of an unauthorised issue of shares by a Company, see *Feiling and Rimington's case*, *Re Financial Corporation* (Law Rep. 2 Ch. App. 714), and *Re New Zealand Banking Corporation*, *Sewell's case* (Law Rep. 3 Ch. App. 131).

As to the making and recovery of calls upon shares, see sect. 70, *infra*. As to calls upon shares, see also sect. 24 of "The Companies Act, 1867," *post*.

As to the issue of preference shares, see *ante*.

As to the forfeiture and cancellation of shares, see *ante*.

As to a lien of a Company on the shares of its members, see *ante*.

Where a judgment is recovered at law against the owner of shares in a Company the judgment-creditor may make the shares available for the payment of the debt by applying to a judge for an order charging the shares of the judgment-debtor with the payment of the amount for which judgment has been recovered, and costs and interest thereon pursuant to the stat. 1 & 2 Vict. c. 110: (see *Fowler* v. *Churchill*, 11 M. & W. 57; and *Robinson* v. *Burbidge*, 9 C. B. 289.)

The mode of proceeding is to obtain a rule *nisi* in the first instance, *ex parte*, and without notice to the debtor.

The form of the rule *nisi* is that unless cause be shown to the contrary by the judgment-debtor within a given time the shares in the Company standing in the name of , shall be, and shall in the meantime stand charged with the payment of the amount for which judgment has been recovered, and costs and interest thereon pursuant to the stat. 1 & 2 Vict. c. 110: (see the cases last above cited.)

The effect of this rule is to restrain the Company from permitting a transfer of the shares held by the debtor or by any person in trust for him until the rule is made absolute or discharged; and, if the Company

permits a transfer of the debtor's shares during the continuance of the rule, the Company becomes liable to the creditor to the amount of the value of the shares transferred: (see 1 & 2 Vict. c. 110, ss. 14 to 16; and 3 & 4 Vict. c. 82.) The shares, however, are not actually charged until the charging order is made; but, on its being made, such an order has the same effect as a charge made by the debtor himself in favour of the creditor, subject to this qualification, that no proceeding can be taken to have the benefit of the charge created by the order until after six months from its date: (see *Bristed* v. *Wilkins*, 3 Ha. 235; *Reece* v. *Wilkins*, 5 De G. & S. 480.)

If the creditor has his debtor arrested before the shares have been applied in satisfaction of the debt, he cannot avail himself of the benefit of the charging order: (1 & 2 Vict. c. 110, s. 116.)

When a judgment-debtor held shares in trust, the court refused an application to rescind a charging order that had been made on shares so standing in his name on the register of a Company: (*Cragg* v. *Taylor*, Law Rep. 1 Ex. 148.)

See, also, *Rogers* v. *Holloway*, 5 Man. & G. 292.

The interest of a *cestuique trust* may also be charged, and that even when it is only contingent, under 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, s. 1: (*Cragg* v. *Taylor*, W. N. 1867, p. 37.)

As to obtaining a charging order under a decree or order of the Court of Chancery, see *Wells* v. *Gibbs* (22 Beav. 204), *Westby* v. *Westby* (5 De G. & S. 516), and *Stanley* v. *Bond* (7 Beav. 386).

(*b*) *Or other interest.*]—These words include the interest of a member of a mutual Company in which there are no shares.

(*c*) *Personal estate.*]—It has been held that dealing in shares in a joint-stock Company is not trading under the bankrupt laws, on the ground that shares are not "goods and commodities" within the meaning of "The Bankruptcy Act, 1849," s. 65: (*Re Cleland*, Law Rep. 2 Ch. App. 466; 16 L. T. N. S. 403.)

It has been decided, however, that they are goods and chattels within the meaning of sect. 125 of "The Bankruptcy Act, 1849" (12 & 13 Vict. c. 106), by which it is enacted, "that if any bankrupt at the time he becomes bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy:" (*Ex parte Lancaster Canal Company*, Mont. 116; Mont. & B. 94; *Ex parte Lawrence*, De G. 269; *Ex parte Vallence*, 2 Deac. 354; and *Ex parte Boulton*, 1 De G. & J. 163.)

A bankrupt will be deemed to have shares "in his possession, order, or disposition" if he has the power of giving a valid discharge for the money payable in respect of them, and the power of transferring them as if they were his own. A mere assignment of shares by way of mortgage or otherwise, however binding as against the assignor, will not take them out of the order and disposition of the assignor, in case of his becoming bankrupt, unless notice of the assignment has been given to the Company whose shares they are: (*Ex parte Nutting*, 2 M. & D. 302; *Ex parte Littledale*, 6 De G. M. & G. 714.)

The fact of shares continuing registered in the name of the bankrupt will not leave them "in his possession, order, or disposition" if he has dealt with them so as to confer an interest in them on another, and the

Company has notice of such dealing: (*Morris* v. *Cannan*, 8 Jur. N. S. 653; 6 L. T. N. S. 17, 521.)

It is not material by whom the notice is given, see *Re Rawbone* (3 K. & J. 300), and *Re Turquand* (20 Beav. 20); and it was recently held by the Court of Chancery Appeal (*Re Agra Bank, Worcester's case*, Law Rep. 3 Ch. App. 555) that where directors of a Company, in the course of transacting the business of a Company, received verbal information from the assignor of shares of the fact of his having assigned them, such information, though not recorded in the books of the Company, was sufficient notice to take them out "of the possession, order, and disposition" of the assignor on his afterwards becoming bankrupt.

See, also, *Ex parte Richardson* (M. & Ch. 43), *Gale* v. *Lewis* (9 Q. B. 730), *North British Insurance Company* v. *Hallett* (7 Jur. N. S. 1263 M. R.), and *Re Shelley* (5 N. R. 200, L. C.). But see *Edwards* v. *Martin* (Law Rep. 1 Eq. 121), where knowledge casually acquired by a secretary was not considered sufficient notice.

As to notice to one director or officer of a Company being notice to the Company, see *Brown* v. *Savage* (4 Drew. 635), *Ex parte Nutting* (2 M. D. & De G. 302), and *Ex parte Boulton* (1 De G. & J. 163; 26 L. J. Bank. 45).

As to shares pledged with a director, without whose consent they cannot be transferred, being taken out of the order and disposition of the shareholder, see *Ex parte Harrison* (3 M. & A. 506).

A mere equitable interest in shares will not entitle the owner of it to impeach, either in equity or at law, the legal ownership, or even the legal right to be registered, acquired by a *bonâ-fide* purchaser for value without notice of such prior equitable interest. This is illustrated by the case of *Dodds* v. *Hills* (2 Hem. & Mil. 424), in which a sole trustee of shares executed a transfer, and delivered it, with the certificates of five shares, to a mortgagee who had no notice of the trust. The mortgagee did not register his transfer until after notice of the trust. It was held that the transfer could not be impeached, and also that the fact of the certificates showing that the shares had formerly stood in the names of two persons, was not enough to put the mortgagee on inquiry or fix him with notice.

See, also, *Donaldson* v. *Gillot* (Law Rep. 3 Eq. 274), in the case of *Ward* v. *The South-Eastern Railway Company* (2 E. & E. 812), in which it was held that a railway Company, having entered on its register a *bonâ-fide* purchaser of stock from a registered holder, was not entitled to cancel the registration, although the transferor was a married woman, supposed by the Company to be single, and was a trustee for a person who was indebted to the Company.

Where a share is equitably assigned, or mortgaged more than once, the assignee or mortgagee who has first given notice of his claim on the shares to the Company will be entitled to priority over an assignee or mortgagee whose notice has been subsequently given, and that even when the assignment or mortgage of the latter was created before that of the former: (*Cumming* v. *Prescott*, 2 Y. & C. Ex. 488.)

The price of shares may be recovered in an action for "goods and chattels" sold and delivered: (*Lawton* v. *Hickman*, 9 Q. B. 563); and see *Pierrepoint* v. *Brewer* (10 Jur. 79) as to their being property in respect of which bail may justify.

Shares in a Company incorporated under "The Companies Acts, 1856 and 1857," were held not to confer upon the holder a right to vote for

a member of Parliament in respect of lands held by the corporation: (*Bulmer* v. *Norris*, 9 C. B. N. S. 19.)

(*d*) *In manner provided by the regulations of the Company.*]—These words confer upon every shareholder in a Company under this act the right of transferring his shares to another and placing him in the position of the transferor. The transferor of shares, however, is liable, by sect. 38, *infra*, for a period of one year after the date of the transfer to contribute, in case of a winding-up of the Company, in respect of any debt or liability of the Company contracted before the time of the transfer. Shares may be transferred according to the particular form prescribed by the regulations of the Company; and the owner may, by contract, bind them in equity like any other description of property: (*Shepherd* v. *Gillespie*, Law Rep. 3 Ch. App. 764.)

A form of transfer will be found in the first schedule to this act, Table A. It appears that, although shares may be transferred by instruments in other forms than those prescribed, the Company may refuse to register them if they are complicated and differ substantially from those prescribed by the regulations: (*Copeland* v. *North Eastern Railway Company*, 6 E. & B. 277; *Reg.* v. *General Cemetery Company*, Ib. 415.)

Shares are property within the meaning of the Stamp Act; instruments of transfer therefore must state the true consideration for the transfer, and be stamped accordingly.

Shares standing in the names of trustees or lunatics may be transferred, as the case may require, under an order of the Court of Chancery or an order in lunacy: (*Re Angelo*, 5 De G. & Sm. 278; *Re Ives*, 9 Jur. N. S. 611.)

Transfer to an Infant.

A transfer to an infant is not absolutely void, but only voidable, and the infant may, on coming of age, elect to take the shares (*Re Blakely Ordnance Company, Lumsden's case*, Law Rep. 4 Ch. App. 31, *post*); but, when a winding-up order is made before the infant comes of age, and while the shares are registered in the name of the infant, the infant cannot be placed on the list of contributories, and the transferor continues liable: (*China Steam Ship and Labuan Coal Company, Capper's case*, Law Rep. 3 Ch. App. 458.)

The facts of this case were as follows:—In June, 1865, S., having bought in the market shares belonging to C., gave the name of A. as the transferee, and C. accordingly transferred them to A., who was registered as owner. A. was a clerk of S., and was an infant. In November, 1865, C. received a letter from the solicitors to the Company, informing him that A. was an infant, and applying to him for payment of a call. C. having found upon inquiry that his share certificates had been cancelled and new certificates issued to A., took no further notice of the matter, and no further step was taken on either side till January, 1867, when the application for the call was renewed, after a resolution for winding-up the Company had been passed. It was held (affirming the decision of the Master of the Rolls) that C. must be on the list of contributories.

See, also, *Re Joint-Stock Discount Company, Mann's case*, Law Rep. 3 Ch. App. 459; *Re Imperial Mercantile Credit Association, Curtis's case*, Law Rep. 6 Eq. 455; *Re Alexandra Park Company, Hart's case*, Law Rep. 6 Eq. 512; and *Re Barned's Banking Company, Delmar's case*, W. N. 1868, p. 247, *post*.

As to an infant shareholder being bound, unless he repudiates his contract, to take shares within a reasonable time after obtaining majority, see *The Dublin and Wicklow Railway Company* v. *Black* (8 Exch. 181).

Sale of Shares.

A contract for the sale of shares is not within the 17th section of the Statute of Frauds. This was decided as to Joint-Stock Banking Companies in *Humble* v. *Mitchell* (11 Ad. & E. 205); as to shares in a Canal Company in *Latham* v. *Barber* (6 T. R. 67); as to railway shares in *Bowlby* v. *Bell* (3 C. B. 284) and *Tempest* v. *Kilner* (Ib. 249); as to shares in a mining Company in *Watson* v. *Spratley* (10 Exch. 222); and as to sales or contract to deliver foreign stock consisting of bonds and certificates in *Heseltine* v. *Siggers* (1 Exch. 856). The court in the last case cited observed that a sale of such securities is not like a sale of specific goods. It passes no property until delivery, and, in effect, it means only a contract to deliver some shares. So far then, as the Statute of Frauds is concerned, contracts for the sale of shares need not be in writing.

Time bargains for the sale of stock in the British funds were rendered illegal by 7 Geo. 2, c. 8, known as "Sir John Barnard's Act." This enactment was repealed by 23 Vict. c. 28: (see *post.*) But with respect to sale and purchase of shares and stock in Joint-Stock Banking Companies, it is provided by 30 Vict. c. 29, *post*, that contracts for the sale of such shares are to be "null and void to all intents and purposes," unless the numbers by which such shares are distinguished are set forth in the contract, or, if there is no register of such shares, unless the contract sets forth the person in whose name such shares shall stand at the time of making the contract as the registered proprietor in the books of the banking Company.

It is implied in a contract for the sale of shares that the transfer is to be made within a reasonable time. If the sale is made through brokers, the rules of the Stock Exchange respecting the time within which shares sold are to be delivered to the purchaser are admissible in evidence upon the question of reasonable time: (*Stewart* v. *Cauty*, 8 M. & W. 160; *Field* v. *Lelean*, 6 H. & N. 617.)

Usage of the Stock Exchange.

A broker is one who makes bargains for another and receives a commission for so doing: (*Pott* v. *Turner*, 6 Bing. 706.) A sharebroker, however, is dealt with usually as a principal, and is therefore bound to the completion of his contract to buy or sell shares. The object of their thus acting as principals appears to be to secure the passing of the purchase-money through their hands, and to prevent its being paid to their principal: (*Child* v. *Morley*, 8 T. R. 610; *Jones* v *Littledale*, 6 Ad. & E. 486.)

In case a transfer is founded upon a previous agreement to transfer for value, this is usually carried into effect by the intervention of brokers. These buy and sell, in accordance with the rules and usages of the Stock Exchange; and any person employing a broker to buy or sell scrip or shares will, in the absence of any express agreement to the contrary, be deemed to have authorised him to act conformably to the rules of the Stock Exchange. Therefore, a person employing a broker to buy or sell scrip or shares is deemed implicitly to warrant to indemnify him for any breach of contract which may be caused by the default of the principal. The nature of this implied right to indemnity

on the part of the broker where the broker is employed to sell shares is exemplified in the cases of *Sutton* v. *Tatham* (10 Ad. & E. 27), *Bayliffe* v. *Butterworth* (1 Exch. 425). The principle, as applying where the broker is employed to buy, is illustrated by the cases of *Stray* v. *Russell* (1 E. & E. 888), *Taylor* v. *Stray* (2 C. B. N. S. 175), and *Bayley* v. *Wilkins* (7 C. B. 886).

These cases were decided on the ground that the usage of the Stock Exchange on the point in question was impliedly part of the contract.

The principal is bound by the usage of the brokers of the particular place where the contract is entered into, whether he himself knows, or not, the usage in question. "I think," said Denman, C.J., "a person employing one who is notoriously a broker must be taken to authorise his acting in obedience to the rules of the Stock Exchange." Littledale, J., as to the same matter, observes:—"A person who employs a broker must be supposed to give him authority to act as other brokers do. It does not matter whether he himself is acquainted with the rules by which brokers are governed": (*Sutton* v. *Tatham*, 10 Ad. & E. 27.) If the principal, therefore, cannot procure the shares he has contracted to sell or pay the difference (if any) in price to the purchaser, the broker, on paying this sum, can recover it from the principal: (S. C.; *Child* v. *Morley*, 8 T. R. 614.)

The case of *Chapman* v. *Shepherd* (Law Rep. 2 C. P. 228) throws peculiar light upon this status of brokers. In that case it was held that a broker who had bought shares for a customer in a Company, and who had, in accordance with the rules and regulations of the Stock Exchange, been compelled to pay the price of them to the person from whom he bought, was entitled to recover back from his principal the money so paid. The principal sought to repudiate his liability on the ground that a petition to wind-up was presented before the contract was completed by transfer, and that, consequently, it was rendered void under sect. 153, *infra*. The court, however, held that the effect of that section was not to make the contract void *inter partes*, especially since it was in the discretion of the Court of Chancery to allow it to operate as a transfer to all intents.

In another case (*Brederman* v. *Stone*, Law Rep. 2 C. P. 504) the plaintiff, a broker on the Stock Exchange, sold for the defendant thirty shares in a Company after it had commenced to wind-up voluntarily. The sanction of the liquidator, as required by sect. 131, *infra*, had not been obtained to the transfer. The defendant upon that ground refused to execute a transfer; whereupon the plaintiff was compelled, by the rules of the Stock Exchange, to furnish to the buyer other shares in the same Company, for which he paid an advanced price. It was held that as the statute made in such a case a transfer of shares without the sanction of the liquidators only void, but not illegal, the defendant was liable to an action for refusing to execute the transfer, and was so, whether it was the duty of the buyer or of the seller to obtain the required sanction.

A broker, in short, is entitled to recover from his principal all money paid by him under the terms of his engagement, and can recover the same as so much money paid, even though the principal may not have been relieved from a liability by the payment: (*Brittain* v. *Lloyd*, 14 M. & W. 762; *Westropp* v. *Solomon*, 19 L. J. N. S. C. P. 1.)

If the shares in which the broker has dealt have been forged, in consequence whereof he has been compelled to refund the price he had received, he can recover it from his principal: (*Westropp* v. *Solomon*, 19 L. J. N. S. C. P. 1.)

In like manner, if a broker employed to buy finds his principal unable or unwilling to pay the price, and pay it to the seller's broker, he can then sue his principal for so much money paid to his use, and he will be entitled to recover. If it be usual for brokers to make the contract in their own name, the principal will be affected with implied notice of such usage: (*Bayliffe* v. *Butterworth*, 1 Exch. 425; 5 Rail. C. 238; 17 L. J. N. S. Ex. 78.)

In the case of *Bayley* v. *Wilkins* (7 C. B. 886; 18 L. J. N. S. C. P. 273) the defendant ordered the plaintiff, a stockbroker, to purchase for him twenty shares in a certain railway at a certain price, which was done accordingly. The defendant paid the amount with commission, and the transfer was made. Before the sale a call had been made, but was not then due, and no mention was made of it. Immediately after the sale the vendor paid up the call though not then due, which it was necessary to do in order to make the transfer. The plaintiff, pursuant to a rule of the Stock Exchange, "that if a call has been made on registered shares, the seller is authorised to pay the same, though not due, and claim the amount of the purchaser," paid the vendor the amount of the call. The court held that the defendant, in employing a broker on the Stock Exchange, must be taken to have contemplated that which was the rule of the Stock Exchange, and that the plaintiff was entitled to recover the amount paid over from the defendant in an action for money paid to the defendant's use.

Where a broker sold foreign bonds for his principal, and paid him the amount, and the bonds, after coming into the hands of the purchaser, were found to be unsaleable on the Stock Exchange, owing to their being unstamped, whereupon the broker took them back and reimbursed the purchaser, as he was bound to do by the usage of the Stock Exchange, it was held that the broker was entitled to recover from his principal in an action for money had and received the amount he had paid him: (*Young* v. *Cole*, 3 Bing. N. C. 724.)

Although a contract for the sale and purchase of shares where neither party intends to deliver or to accept them, but merely to pay "differences" according to the rise or fall of the market, is *gaming* within the 8 & 9 Vict. c. 109, s. 18 (see *Grizewood* v. *Blane*, 11 C. B. 538; *Rees* v. *Fernie*, 4 N. R. 539), yet a broker who has paid money for his principal in respect of such "differences" can recover it from his principal: (*Rosewarne* v. *Billing*, 15 C. B. N. S. 316.)

It is plain that the contracts entered into by brokers are controlled by the usage of the particular place. Wherever general or local rules of the trade do not apply, then, of course, the relations of the broker to the principal are governed by the general law of agency. If a broker, therefore, receives money from his principal for a particular purpose, on the strength of which he enters into a contract, but it is not completed within a reasonable time, he is bound to return the money to the principal; and the principal may forbid the broker giving an extension of time to his contractor: (*Fletcher* v. *Marshall*, 15 M. & W. 755; 5 Rail. C. 340.)

It was held, in *Rooney* v. *Palmer* (9 Ir. Law Rep. 327), that a stockbroker negotiating the sale of shares is not a promoter within the meaning of 7 & 8 Vict. c. 110, s. 24, which imposes a penalty on the "promoters" or persons employed by or under them taking before provisional registration moneys in consideration of the allotment, &c., or making any contract in the name or on behalf of the intended Company.

The duty of a broker employed to purchase shares is only to use reasonable diligence in endeavouring to procure them, and not to get them at all events: (*Fletcher* v. *Marshall*, 15 M. & W. 762; 5 Rail. C. 340.) Their duty is to buy what is commonly known in the market as the shares they are desired to buy: (*Mitchell* v. *Newhall*, 15 M. & W. 308; 4 Rail. C. 300; 15 L. J. Ex. 292.) There the defendant gave the plaintiff, a broker on the Stock Exchange, an order to purchase for him fifty shares in a foreign railway Company; the defendant bought a letter of allotment for fifty shares, such letters alone, and not shares, being in the market, and being usually dealt in as if shares; it was held that a jury might find that the order was properly executed.

It appears that a broker employed to sell shares cannot be compelled by a suit in equity to procure a due transfer of the shares sold to the purchaser and a registration in his name of the shares: (*Booth* v. *Fielding and Parkinson*, W. N. 1866, p. 245.)

Where a broker is authorised to buy shares, the authority may be revoked, and the money paid to him be demanded back at any time before he has acted upon his authority to buy them: (*Fletcher* v. *Marshall*, 15 M. & W. 755.) See, also, upon this point, *M'Ewen* v. *Wood* (11 Q. B. 13) and *Ross* v. *Moses* (1 C. B. 227).

If a broker buy or sell shares in an illegal Company, or in one which is not in a position legally to issue shares, he cannot recover commission from his principal on account of such an illegal transaction. In *Josephs* v. *Pebrer* (3 B. & C. 639), in assumpsit for work and labour and money expended in the purchase of shares in a concern called "The Equitable Loan Bank Company," it appeared that the Company professed to have a capital divided into shares which were to be transferable without any restriction. No evidence was given to explain the objects of the Company. It was held that the Company was to be considered illegal, and within the operation of 6 Geo. 1, c. 18 (the celebrated "Bubble Act"), in having transferable shares and professing to act as a body corporate without authority by charter or act of Parliament, and that the plaintiff consequently could not maintain his action, which arose out of an illegal transaction. Sects. 18 and 19 of the Bubble Act, under which this case was decided, were repealed by 6 Geo. 4, c. 91. The case, however, is important as illustrating the position of brokers with reference to illegal Companies. No condemnation by the Stock Exchange Committee of a Company, such as refusing to nominate for it a settling day, or the like, will render it illegal, unless it be essentially so according to law.

As regards the sale of shares by auction, if an auctioneer sells shares without disclosing the name of his principal, he will be personally liable for the completion of the contract: (*Franklyn* v. *Lamond*, 4 C. B. 637.)

See the case of *Stray* v *Russell* (1 E. & E. 888), as to a person who buys shares through a broker being compelled to pay for them, although the Company decline to accept him as a shareholder.

Dealers or Jobbers.

Besides brokers there is another class of members of the Stock Exchange who are termed dealers or jobbers, and who hardly at all come in contact with the public. The jobber acts as intermediate party between the broker who buys and the broker who sells, as J. Byles described him in his judgment in *Grissell* v. *Bristowe* (Law Rep. 3 C. P. 137): "He is or may become a sort of middleman

or provisional purchaser and vendor for both parties respectively; and the advantage of employing him is this, that he at the same time and place provides a ready or rather an instant market both for buyer and seller. In ordinary cases he does not become the ultimate purchaser, and the shares may and do change hands many times before the ultimate purchaser is reached; and they may even pass through the hands of several jobbers in succession. It is true the jobber receives no brokerage from either side, but is, I believe, paid by an equivalent very like it, viz., the turn of the market or difference of price to buyer and seller." The jobber, however, makes a profit only in those cases where the turn of the market is in his favour; it may be against him, and then he incurs a loss. On this subject generally, see Keyser on the Stock Exchange, p. 23.

It is the duty, of course, of the purchasing jobber to supply the names of unobjectionable persons who have agreed and are bound to take the shares. As to the rules of the Stock Exchange (in 1861) with regard to recognising a Company, and fixing a settling day for it, see *Barry* v. *Croskey* (2 John. & H. 1).

With respect to dealings in Companies whose shares are quoted in the official list of the Stock Exchange, where a broker is employed to buy or sell any such shares, he applies to a jobber, who, without knowing whether the object of the broker is to buy or sell shares, names a price at which he is willing to buy shares in the particular Company, and a somewhat higher price, at which he is willing to sell shares in the same Company. Before a settling day is fixed, as hereinafter explained, no dealings for cash can take place, nor can any dealings be enforced by the rules of the Stock Exchange until after such settling day is fixed. After the first settling day has passed, the broker or his employer may either require the bargain to be completed immediately, for money, or on the next account or settling day. Two settling days are appointed in each month by the Stock Exchange, and for these days all bargains for time are made. If the dealer is the seller, but has not the shares, it becomes his duty to procure them at once, or on the next account or settling day as the agreement may be. If the seller makes a default, he thereupon ceases to be a member of the Stock Exchange. The purchaser may then buy the number of shares stipulated for from somebody else, and charge the selling jobber the difference in price (if any).

These rules only apply to Companies recognised by the committee of the Stock Exchange. It recognises no Company until first satisfied by the directors and officers thereof as to the *bonâ fides* of the undertaking, the allotment and issue of shares, the payment of deposits, and generally as to the constitution and position of the Company.

The slang terms of the Stock Exchange are somewhat numerous. A wager on the price of stock, for instance, is termed a "put and refusal." The price at which stock is sold, to be transferred on the next settling day, is called the "price on account." If the completion of the bargain is deferred, this is called a "continuation;" the price is then higher for account than for ready money. "Backadation," on the contrary, is the consideration given to keep back the delivery of stock when the price is lower for time than for ready money. The names of defaulters on the Stock Exchange are proclaimed there by one of the waiters; and finally, perhaps, placed by the committee on the Black Board of the Stock Exchange: (see Wilkinson on Public Funds, p. 155 *et seq.*)

It has been held that a jobber or dealer on the Stock Exchange who in the ordinary course of business has purchased shares in a Company, and has duly procured a nominee who has taken and paid for the shares, and to whom the original seller has transferred them, but who has not registered himself as the holder, is not under any implied liability to indemnify the seller against the payment of subsequent calls upon such shares.

The usage of the Stock Exchange is that, in transactions between members of it, there is an implied understanding that, on the purchase of stock or shares, the buying jobber shall be at liberty by a given day, called the "name day," to substitute another person as buyer, and so relieve himself from further liability on the contract, provided such substituted person be one to whom the original seller cannot reasonably except, and that such person accept a transfer of the stock or shares, and pay to the original seller the price. This was held by the Court of Exchequer Chamber (reversing the judgment of the Court of Common Pleas) to be a reasonable usage, inasmuch as a usage founded on the general convenience of all persons engaged in a particular department of business, cannot, as regards such persons, be said to be unreasonable.

The plaintiff, the holder of shares in a Company called Overend, Gurney, and Co., through a broker, sold them to the defendants, jobbers on the Stock Exchange. After various sub-sales, the names of four persons were given to the plaintiff's broker as the persons to whom the shares were to be transferred. The plaintiff's broker thereupon prepared four transfers to those persons, and the plaintiff executed them, and the broker delivered them with the shares to the brokers of the proposed transferees, who thereupon accepted the shares, and paid the price to the plaintiff's broker. The transferees not having executed the transfers, or caused them to be registered, the plaintiff remained the registered holder of the shares, and was compelled to pay calls thereon. In an action against the defendants, claiming an indemnity against calls, it was held (reversing the judgment of the Court of Common Pleas) that the contract as interpreted by the usage of the Stock Exchange was, that the defendants, the first buyers, were to be at liberty to transfer the contract, with all its rights and obligations, to any sufficient buyers (*i. e.*, "buyers to whom the seller has no reasonable ground to object") who would take it upon them with all its incidents; and that as the plaintiff had transferred the shares to the defendants' nominees, and the nominees had accepted and paid for them, though they had not executed or registered the transfers, the defendants were released from all further liability on their contract to the plaintiff: (*Grissell* v. *Bristowe and Another*, Law Rep. 4 C. P. 36.)

Kelly, C. B., in his judgment in this most important case, after showing that when the practical effect of this usage or mode of dealing on the Stock Exchange came to be considered, there is no hardship or injustice in it as regards the interests of the public, went on to say: "This practice affords to the public the very great advantage of being enabled by means of a stockbroker and a jobber, to buy or sell at any moment any quantity of stock, or any number of any description of shares at the market price of the day, and concluding the transaction at the latest on the settling day; whereas without such a practice, every one having any given amount of stock, English, foreign, or colonial, or of debentures or shares in railways or other joint-stock Companies to buy or to sell, must wait until a buyer or seller could be found to sell or to buy the exact quantity of stock or of shares which is to be parted

with or acquired, a state of things which in this country, where some hundreds of those purchasers and sales are effected every day, would be found intolerable, and would speedily demand a remedy, than which no better could be devised than this practice so long established, and which has never until now been called in question."

But where the vendor of shares sells them to a jobber, who on the same day passes the name of a person as the ultimate purchaser who has not agreed, and is not bound to purchase the shares on that day, the vendor of the shares is entitled to be indemnified by the jobber against calls subsequently made on the shares: (*Maxted* v. *Paine*, Law Rep. 4 Ex. 81.) The facts of this case were as follows: the plaintiff on the 24th of May, 1866, through his brokers, sold to the defendant, a jobber, for the account of the 30th, thirty shares in a Company that had previously stopped payment and closed its transfer books. On the 29th, the name day, the defendant gave to the plaintiff's brokers the name of M. (which he had received from another jobber), as the ultimate purchaser and nominee of the shares. M. had sanctioned the passing of his name for the account of the 15th of May, provided a legal transfer of the shares could be effected, but the shares had been carried over from the 15th to the 30th without his authority, and on the 29th he was in fact, though not to the knowledge of the defendant, no longer a person who had agreed or was bound to purchase shares in the Company. The plaintiff had bought the shares resold by him to the defendant from S., the registered holder, and was under a contract to indemnify S. against future calls although no formal transfer had been executed. On the 8th of June, a transfer of thirty shares duly executed by S. was tendered to M., but declined by him. Two calls were afterwards made on the shares sold, and the plaintiff, after unsuccessfully applying to M. to pay those, was compelled under his contract with S. to pay them himself. It was held, on a special case, that the defendant had not by passing M.'s name as ultimate purchaser and nominee, relieved himself from liability, and that he was bound to indemnify the plaintiff against the calls.

As to the liability of a jobber or dealer in equity, to indemnify the vendor of shares where a sale note was made "with registration guaranteed," see *Cruse* v. *Paine*, Law Rep. 6 Eq. 641, *infra*.

In the case of *Torrington* v. *Lowe* (Law Rep. 4 C. P. 26) the plaintiff, on the 10th of May, 1866, through his broker, sold, on the Stock Exchange, twenty shares, registered in his name, to P., a jobber, for the settling day, the 15th of May. The defendant, on the 2nd of May, through his broker, bought of P. twenty shares in the same Company for the same account; and, on the day before the settling day, his broker having learnt from P. that the plaintiff's broker was to supply the twenty shares so purchased by him, instructed P. to give the name of Cotton as the transferee. A transfer into the name of Cotton was prepared according to the custom of the Stock Exchange, and duly executed by the plaintiff and by Cotton. Cotton neither paid nor agreed to pay the defendant any sum in respect of the same; and, although there was no agreement as to the terms on which the defendant was to make use of the name of Cotton, the former had authority to have the shares transferred into the name of Cotton as his nominee. A petition for winding-up having been afterwards presented, the liquidators refused to register the transfer, and placed the plaintiff on the list of contributories, and he was consequently obliged to pay certain calls. It was held, in an action brought to recover the amount of the calls, that

the plaintiff was not entitled to be indemnified by the defendant against such calls, as there was no privity of contract between them.

In this case the plaintiff failed because there was no privity of contract between him and the defendant, while, if P. sued the defendant, he might plead in bar of his liability the usage of the Stock Exchange, which enabled him to procure a substitute, paying the price, and otherwise unobjectionable. The plaintiff and Cotton being the parties to the deed of transfer, it was not competent for the plaintiff to aver that Cotton executed the deed as agent for the defendant, the doctrine of undisclosed principal not being applicable to deeds. In the absence of evidence of there being any express usage of the Stock Exchange on the point, the question in this case appears to have been rightly determined; and in equity the plaintiff would appear to be equally remediless against the defendant for want of privity. So far as the usages of the Stock Exchange tend to settle the point, they are altogether in favour of the defendant. A sale of shares on the Stock Exchange is thus not unlike the logical argument *sorites*, in which the middle terms, no matter how numerous, are important only in carrying on the *vis consequentiæ*. So the actual contract of sale is only between the vendor and the final purchaser when once accepted by the vendor, and this no matter how numerous may be the intervening links. It will be observed that in the case of *Grissell* v. *Bristowe* (Law Rep. 4 C. P. 36) there was a privity of contract between the plaintiff in that case and his defendant, but the usage of the Stock Exchange defined the extent of liability entailed by that privity of contract. In *Torrington* v. *Lowe* (Law Rep. 4 C. P. 26), however, there was no privity of contract between the plaintiff and defendant, and no factitious privity created by any usage of the Stock Exchange.

For decisions in equity with regard to jobbers or dealers on the Stock Exchange, see section *infra*, on "Specific Performance and Indemnity."

Informal Transfers.

Transfers in Blank (*at Law*).—It is the common practice in the share market to sign a deed of transfer with the name of the transferee in blank, no matter what may be the requirements for transfer directed by the Articles of Association of the Company in which the shares in question are. The buyer then may sell to a third party, who may sell to a fourth, and so on: the name of the final purchaser alone being inserted. Where a transfer should be executed by deed this mode of proceeding, considered as a transfer, is obviously imperfect, and null and void both at law and in equity. For a document purporting to be a deed must have all blanks filled before execution, else it is not a deed: (Com. Dig. Fait A. 1; Shep. Touch. 54; *Weeks* v. *Maillardet*, 14 East, 568; *Powell* v. *Duff*, 3 Camp. 181.) A deed cannot be made transferable or negotiable as a bill of exchange or exchequer bill; and, consequently, this Stock Exchange custom of transferring in blank cannot operate at law to give a document the legal character and incidents of a deed. The instrument in blank, therefore, does not at law, where there is a provision in the articles that transfers are to be by deed, transfer the ownership in the shares to which it relates, even as between the vendor and vendee.

It is only, however, as a deed that a transfer in blank is worthless. If a deed be required for the transfer, then a transfer in blank is good evidence of the contract; and, if the transfer in the particular case does not require any formal document, as in the case of a cost-book mining Company, a transfer in blank doubtless completes the

contract. In *Walker* v. *Bartlett* (18 C. B. 845), a transfer in blank of a share in a cost-book mining Company was held to entail upon the transferee the liability to indemnify the transferor against calls, though not to subject him to the obligation of getting his name registered in lieu of that of the transferor.

Transfers in Blank (*in Equity*).—A transfer in blank, if inoperative as a deed at law, is equally so in equity; but its invalidity as a deed does not affect the contract for sale in equity. The Court of Chancery, therefore, will decree a specific performance of the contract, and, as incidental to such jurisdiction, it will also enforce the rights resulting from the transfer: (*Morris* v. *Cannan*, 8 Jur. N. S. 653; *Cheale* v. *Kenward*, 3 De G. & J. 27; *Beckitt* v. *Billborough*, 8 Ha. 188.)

Other Informal Transfers.—Regulations in articles for the transfer of shares are intended to protect the Company. Compliance with such forms, therefore, is a duty cast upon the purchaser for the benefit of the Company, while his non-compliance with such regulations does not enable him, as respects the Company, to retire from his contract. This was decided in *Burnes* v. *Pennell* (2 Ho. Lords Cas. 497). See also *Mangles* v. *Preston Collier Company*, 2 Rail. C. 335, and *Ib.* 339; *Yelland's case*, 5 De G. & Sm. 395. Even where the formality is material, yet, if its omission is known to and acquiesced in by the shareholders, the court will, as against the Company, infer that the transfer is valid. G. brought an action against a Company in which he was a shareholder, whereupon, in settlement of the action, it was agreed that G. should, for a consideration, transfer his shares to S., who was the managing director. This arrangement was carried into effect, and the transfer registered. Two years afterwards the Company was wound-up, and the official manager placed his name on the list of contribntories, on the ground that the transfer was invalid, S. being a trustee for the Company, and the assent of the shareholders not having been obtained. The Lord Chancellor, however, considered that, independently of the question of notice on the part of G. that S. was a trnstee for the Company, they were bound by their acquiescence in the transfer for the two years, and that their consent to the transfer must consequently be presumed. G.'s name, accordingly, was ordered to be taken off the list: (*Re British Provident Life, &c., Assurance Society, Grady's case*, 32 L. J. N. S. Ch. 326.) The Company not being disqualified from purchasing shares, his Lordship considered that the case was similar to that of *Bargate* v. *Shortridge* (5 Ho. Lords Cas. 297; 24 L. J. N. S. Ch. 457). In that case, by the deed of settlement of a banking Company, it was provided that no transfer of a share in the Company should be permitted except upon notice to the directors, and with the consent, in writing, of three directors, such consent being obtained at a board. If such consent was refused, the shareholder might require the directors to buy his shares at the market price of the day. No shareholder could compel an inspection of the books of the Company. S., a shareholder, sent the proper notices to the directors, and received consents signed by three directors, on which he completed his intended transfers. The transferees' names were duly entered in the share register book, and the returns made to the Stamp Office, under the 7 Geo. 4, c. 46, were so made up. The transferees afterwards received the regular notices of meetings, &c. The directors subsequently sought to impeach these transfers, on the ground that the

notices had never been submitted to a "board of directors," but that the consents had merely been signed by the managing director alone, then signed by him, and afterwards signed by two other directors. It appeared that this mode of transacting affairs had been usual with the directors from the very commencement. The House of Lords held that as between the transferor and the Company the consents given by the directors, although informal and irregular, were valid, and that they could not afterwards treat the transferor as a member of the Company. The directors, Lord St. Leonards observed, "were bound by the course of proceeding they had themselves adopted, and the more so as the shareholder had no power to know whether the forms had been properly complied with, or to compel compliance." His Lordship considered that the contract in this case was good even at law.

This decision by the highest tribunal, doubtless overrules the case of *Bosanquet* v. *Shortridge* (4 Exch. 699), in which the circumstances were very similar to those in *Bargate* v. *Shortridge*. Indeed, the case of *Bosanquet* v. *Shortridge* is distinguished by Lord St. Leonards in *Straffon's Executors' case* (1 De G. M. & G. 589), on the ground that the board of directors disclaimed the transfer within a reasonable time. However, it is no authority now upon the present point, neither is *Ness* v. *Angas* (3 Exch. 805), nor *Ness* v. *Armstrong* (4 Exch. 21), which depended upon the construction of a particular act of Parliament (7 Geo. 4, c. 46). See 1 De G. M. & G. *ubi supra*.

In *Taylor* v. *Hughes* (2 Jo. & Lat. 24), it was in like manner held that the directors could not put the shareholder under disabilities and hold him bound as between themselves and him, whatever might be his liabilities as between himself and an adverse creditor of the court.

The Master of the Rolls has distinctly held in *Bagge's case* (20 L. J. N S. Ch. 229) that a Company, after having dealt with a shareholder, could not treat the transaction as void for a want of form, though not immaterial, which their own irregularities had rendered it impossible to observe.

In the case of *Re the Vale of Neath and South Wales Brewery Company, Ex parte Walters* (19 L. J. N. S. 501), shares were transferred into the name of W. in the share ledger of the Company, and were accepted and paid for by him, and he received dividends thereupon; but no formal transfer was made to him in the mode prescribed by the deed of settlement: it was held that W. was a shareholder as between himself and the other shareholders in the Company.

Another case in point is that of *Re the Royal Bank of Australia, Ex parte Cockburn* (20 L. J. N. S. 137). In that case, A., a director in a Company, gave an undertaking to take 100 shares and a promissory note for 1000*l.* in respect of calls made on the shares. A., being desirous to retire from the directorship and to give up his shares, communicated these wishes to the directors. In June, 1842, he was discharged from the directorship, and in July it was agreed that his shares should be taken. This arrangement was carried out by the directors returning to A. his undertaking and note. No other formalities were gone through. The deed of settlement of the Company contained ample powers for the directors to make contracts and to purchase shares. The Company was ordered to be wound-up. Knight Bruce, V.C., held that his name should be taken off the list of contributories altogether, as there was a clause in the Company's deed that a shareholder transferring should be, as between himself and the Company, exempt from all demands up to that time.

A. purchased shares in a banking Company. No transfer of them to him was executed, as required by the Company's deed of settlement, but the directors gave him certificates of the shares, and he received the dividends declared on them from time to time. It was held that A. was a contributory: (*Bernard's case*, 21 L. J. N. S. Ch. 468.)

All the preceding cases proceed upon the footing that the transaction was not illegal or fraudulent in any way or *ultra vires* the Company, but merely defective in point of form. But if it be essentially wrong or *ultra vires* it will be governed by different principles.

A shareholder in a brewery Company sold his share to one of the directors. The shareholder's solicitor, through whom the sale was effected, had notice that the purchase was made by the director with a view of vesting the shares in the Company, to whom the director transferred them on the same day on which they were transferred to him. The deed of settlement did not authorise the purchase on behalf of the Company. It was held that the shareholder was properly placed on the list, although seven years had elapsed since the transfer, and it had remained unquestioned during the whole interval: (*Richmond's Executors' case*, 3 De G. & Sm. 96.) In another case, arising under the same deed, a contrary decision was arrived at, the transaction being authorised by the deed. The husband of a female proprietor sold her shares to the Company for certain debentures. There was a clause in the Company's deed authorising directors to purchase in such cases. It was held that the transaction was valid: (*White's case*, *Re Vale of Neath Brewery*, 3 De G. & Sm. 157.) See *Beresford's case*, 3 De G. & Sm. 175, on appeal; 2 Mac. & G. 197.

In cases of informal transfers, therefore, it is necessary to consider whether the transaction, besides its informality, is also essentially wrong, or *ultra vires*. If it is, then the transfer, of course, is invalid, because in the particular case the defect is one of substance, or the transfer is on other grounds illegal, or *ultra vires*: (*Ex parte Morgan*, 1 Mac. & G. 225; *Ex parte Lawes*, 21 L. J. N. S. Ch. 688.)

As directors have under the act (Cl. 55, Table A., *post*) all the powers of a general meeting of the Company, if the articles do not provide to the contrary, acquiescence by the directors in any irregularity of a transfer is, of course, the acquiescence of the Company. If, however, it be *ultra vires* the Company it is null and void as against it.

The Memorandum of Association of a Company provided that the capital should be 3,000,000*l.*, divided into 30,000 shares of 100*l.* each, "subject to be increased or modified," and the articles gave the board of directors power to divide the shares into shares of smaller amount. The directors exercised this power, and converted each 100*l.* share into five 20*l.* shares. It was held that such conversion was unauthorised and void, for that, under sect. 12 of this act, the memorandum can only be altered in certain particulars, of which this was not one; and, per Lord Cairns, L.J., an express power in the memorandum to reduce the nominal amounts of the shares would be ineffectual. After the attempted conversion, F. transferred to R. fifty of the new 20*l.* shares. These shares could be identified in the books of the Company as being the shares into which ten of the original 100*l.* shares had been converted, and it was held that the transfer was effectual to pass the ten 100*l.* shares, and that R., and not F., must be on the list of contributories: (*Re Financial Corporation*, *Ex parte Holmes and others*, Law Rep. 2 Ch. App. 714.)

See, also, *Re New Zealand Banking Company*, *Sewell's case* (Law Rep.

3 Ch. App. 131), as to shares at first illegally issued in excess of authorised capital, but afterwards rendered valid by special resolution.

See now, however, "The Companies Act, 1867," s. 21, *post*, as to power of dividing shares into shares of smaller amount.

The principle of this decision appears to be that equity regards the substance, as distinguished from the form, of a transaction, and that as the intention was to transfer a certain interest in the shares, a mistake in the description of the shares (for the attempted reduction of their nominal value was illegal and null) did not affect the contract in any material respect. *Falsa demonstratio non nocet.*

A transfer was executed by P. to Company C. of shares in Company B. The intention of both parties was, that P. should transfer, and Company C. accept all the shares which P. held. At the time when P. executed the deed and handed it to his agent it contained no description of the shares. Before it left his agent's hands it was filled up with the number of the shares, being all P.'s shares, and with the description of them as shares in Company B.; but the denoting numbers of the shares were not inserted. The seal of the C. Company was then affixed to it. The denoting numbers of the shares and the date of the transfer were afterwards filled in, it was handed in for registration, and the C. Company were registered as shareholders. It was held that the transaction was not invalidated by the fact of the deed of transfer having been executed in an incomplete form, and that the C. Company were liable as shareholders: (*Re Barned's Banking Company, Ex parte the Contract Corporation*, Law Rep. 3 Ch. App. 105.)

The principle of this decision appears to be that Company C. were bound by contract to take the shares in question, and that the deed, though probably inoperative as a deed, the blanks not having been entirely filled in before execution, was yet satisfactory evidence of the terms of the contract between P. and the authorised officers of the C. Company. It thus appears that a corporation, like an individual, may be bound in equity by a sufficient contract.

In conclusion, it may be added that the tendencies of the courts obviously are to diminish, as much as possible, the category of material defects in transfers.

Actions on Sales of Shares.

Shares are goods and chattels within the meaning of a declaration by the seller for the price. The price of railway or other shares, therefore, can be recovered under a count for goods sold and delivered: (*Lawton* v. *Hickman*, 9 Q. B. 563.)

The actions of most ordinary occurrence are—by the seller against the purchaser for not accepting stock or shares, or for non-payment for them when delivered; by the purchaser against the seller for not delivering them.

Action by Seller against Purchaser.

When a seller sues the buyer for not accepting shares, he must allege his tender of, or readiness to transfer, them; and, in order to prove this averment, if denied, must show his attendance at the time or latest office hour of the day fixed for transfer, and the non-attendance of the defendant; or an actual tender and refusal to accept by the defendant; or that the defendant in some way dispensed with such tender or attendance of the plaintiff, the seller: (*Bordenave* v. *Gregory*, 5 East, 107; see also *Hannuc* v. *Goldner*, 11 M. & W. 849.) The facts proved

may warrant a finding of readiness and willingness to transfer, though no transfer was actually tendered (*Humble* v. *Langston*, 7 M. & W. 517); and in *Shaw* v. *Rowley* (16 M. & W. 810) it was held that the fact of a call being due upon shares agreed to be sold, and that they were not transferable so long as the call remained unpaid, did not disprove readiness and willingness on the part of the seller to transfer if he was in fact ready and able to pay the calls in question. But readiness and willingness is disproved by showing that the plaintiff (the seller) had no shares to transfer at the time fixed for completing his contract: (*Hibblewhite* v. *M'Morine*, 6 M. & W. 200.)

The seller must, of course, be prepared to prove his title to the shares, if it is put in issue. See as to the proof of title to shares in a cost-book mining Company, *Curling* v. *Flight* (6 Ha. 41); S. C. on appeal, *cor.* Lord Cottenham, C. (2 Phillips, 613). See, also, *Steinberger* v. *Carr*, 3 M. & G. 191. And as to the evidence of title to shares by entries in the books of a Company, see *Hare* v. *Waring*, 3 M. & W. 362.

When the assent of directors is necessary for the transfer, the seller must procure and show such assent: (*Wilkinson* v. *Lloyd*, 7 Q. B. 27.) It appears, however, from the later case of *Stray* v. *Russell* (1 E. & E. 888), that, where the sale has been effected on the Stock Exchange, the seller cannot be compelled by an action to refund the price of the shares sold, to the purchaser in the event of the directors of the Company refusing to allow a transfer of the shares, inasmuch as, according to the rules of the Stock Exchange, it is not the duty of the seller to procure the consent of the directors to the transfers.

It would seem that, in the absence of any agreement or usage to the contrary, it is the business of the purchaser to prepare and tender the written transfer, and to cause it to be afterwards registered, where registration is necessary: (*Stephens* v. *De Medina*, 4 Q. B. 422; *Wynne* v. *Price*, 3 De G. & Sm. 310; *Sayles* v. *Blane*, 14 Q. B. 205, 206.)

In an action by the seller of shares against the purchaser for not accepting them, the measure of damages to be recovered is the difference between the contract price and the market value on the day of the purchaser's breach of contract, or on the earliest day afterwards on which they would be sold: (*Pott* v. *Flather*, 5 Rail. C. 85; 16 L. J. Q. B. 366; *Stewart* v. *Canty*, 8 M. & W. 160.) See, also, *Boorman* v. *Nash* (9 B. & C. 145), and *Barned* v. *Hamilton* (2 Rail. C. 624).

Action by Purchaser against Seller.

Where the purchaser proceeds against the seller for not transferring or delivering the shares bought, he must allege, and, if necessary, prove, that he was ready and willing and able to pay for the shares (*Lawrence* v. *Knowles*, 5 Bing. N. C. 399); but an actual tender of payment is not necessary: (*Stephens* v. *De Medina*, 4 Q. B. 422). He must also allege, and, if necessary, prove (in the absence of usage or express agreement to the contrary) a tender to the seller of a written transfer for execution by him in cases where such formal instrument is necessary, as in railway shares (*Stephens* v. *De Medina*, 4 Q. B. 422), unless where the seller by his conduct has dispensed with such a tender: (*Wynne* v. *Price*, 3 De G. & Sm. 310; *Sayles* v. *Blane*, 14 Q. B. 205, 206; 6 Rail. C. 79.)

A contract to deliver shares in a Company does not require the actual delivery of the scrip certificates, but it is sufficiently performed when the seller has put the purchaser in the position of legal owner of the shares: (*Hunt* v. *Gunn*, 13 C. B. N. S. 226.)

Where the action is against the seller for non-delivery, and the plaintiff had not paid the price, the measure of damages is the difference between the contract price and the market value on or about the day of the breach of contract: (*Shaw* v. *Holland*, 15 M. & W. 136; *Tempest* v. *Kilner*, 3 C. B. 253.) Where shares in a Company are not legally saleable for want of registration of the Company under an Act of Parliament, it seems this may be pleaded as a defence. See *Hickman* v. *Lawton*, 9 Q. B. N. S. 563.

The actual purchaser of shares is bound to indemnify the seller against all calls made on the shares subsequently to the transfer. It has been held that when the transferee of shares in a railway Company omitted to register the transfer, and the transferor was in consequence obliged to pay calls made subsequently to the transfer, although he could not recover the amount of the calls from the transferee as money paid to his use, unless the transferee was his immediate vendee, yet a special action would lie for not registering the shares: (*Sayles* v. *Blane*, 14 Q. B. 205; 6 Rail. C. 79.) See, also, *Walker* v. *Bartlett* (18 C. B. 845) as to shares in a cost-book Company.

It has already been shown by the case of *Chapman* v. *Shepherd* (Law Rep. 2 C. P. 228), *supra*, that a contract to buy shares is not invalidated under sect. 153, *infra*, by the fact of a winding-up having commenced before the contract was fulfilled; and by *Biederman* v. *Stone* (Law Rep. 2 C. P. 504), *supra*, a similar decision was given as to sect. 131 in the case of a voluntary winding-up.

Specific Performance and Indemnity.

Although a bill in equity will not generally lie for specific performance of an agreement to transfer stock (*Cuddee* v. *Rutter*, 1 White & Tudor, 709), a court of equity will decree specific performance of an agreement for the purchase and sale of shares: (*Duncuft* v. *Albricht*, 12 Sim. 189; *Shaw* v. *Fisher*, 2 De G. & Sm. 11; *Wilson* v. *Keating*, 27 Beav. 121; 4 De G. & J. 588.) In this case, the purchaser was compelled to pay the price of the shares, where, in fact, he had not previously paid it, although the deed of transfer stated that it was paid.

Specific performance has been decreed of a contract for the sale of shares in a Company, although there was a provision in the deed of settlement "that no shareholder should be at liberty to transfer his shares, except in such manner as a board of directors should approve": (*Poole* v. *Middleton*, 29 Beav. 646.) In his judgment in this case, the Master of the Rolls remarked that he did not say whether the plaintiff would become a shareholder, unless the board of directors approved of the manner in which the transfer was made. His Honour also considered that the board could not exercise an arbitrary and unreasonable will on such an occasion, or reject a mode of transfer in one instance of which they approved in other cases.

In the last case the contract was valid without the consent of the directors; but it has been held that every contract for the sale of shares in a Company, the directors of which have the right of approving or rejecting a proposed transferee, must be regarded as conditional on their approval being given, and, in default of that approval, the contract must be treated as rescinded. A shareholder agreed to sell shares in a Company by the deed of settlement of which the right of transfer was subject to the approval of the board of directors; the purchaser paid the money, but, before any transfer of the shares was made, the court

ordered the Company to be wound-up. Subsequently the vendor and purchaser executed a deed transferring the shares to the purchaser. The official liquidator, acting on behalf of the directors, declined to approve of the purchaser or recognise the transfer; the vendor was put on the list of contributories, and a call was made; and the purchaser brought an action to recover the purchase-money. Upon a bill by the vendor, against the purchaser, to compel specific performance, it was held that the court could not interfere with the discretion of the official liquidator, and that, as the Company did not choose to accept the purchaser as a shareholder, specific performance of the contract could not be decreed: (*Bermingham* v. *Sheridan*, 33 Beav. 660; 33 L. J. Ch. 571; 10 Jur. N. S. 415; 10 L. T. N. S. 256.) See remarks on this case in *Evans* v. *Wood* (Law Rep. 5 Eq. 14), *infra*, and in *Paine* v. *Hutchinson* (Law Rep. 3 Ch. App. 392), *infra*.

A contract to sell shares, in short, will be construed as conditional upon the fair fulfilment of such conditions, and on such approval being given by directors to the transfer as may be required by the Company's Articles of Association.

It appears that specific performance will not be granted of an agreement for the sale of shares entered into after a petition to wind-up the Company had been presented, although before it had been advertised, and while the parties were still ignorant of the fact: (*Re London, Hamburg, and Continental Exchange Bank, Emmerson's case*, Law Rep. 1 Ch. App. 433.)

A jobber on the Stock Exchange, who in the course of business has contracted to sell shares, may enforce specific performance of the contract against the purchaser.

The plaintiffs, dealers in shares, contracted to sell to the agents of the defendant shares which they had purchased from, and which remained registered in the name of C. On the settling day the agents of the defendant gave his name, as principal, for insertion in the deeds of transfer. Transfers executed by C. to the defendant were delivered to defendant's agents, who paid for the shares out of money given to them by the defendant. The defendant refused to execute the deeds and to procure their registration, on the grounds that he told his agents that he intended to resell without taking transfer, and that they had given his name without authority. Five months after the sale, the Company was ordered to be wound-up, and on bill for specific performance and indemnity (filed before the winding-up), to which C. was not a party, it was held that the plaintiffs were entitled to a decree for specific performance, and that the defendant should execute transfers and procure his name to be registered: (*Paine* v. *Hutchinson*, Law Rep. 3 Eq. 257.) On appeal, the decree of Stuart, V.C., in this case was affirmed with a slight alteration, and with the insertion of provisions as to indemnity similar to those in *Evans* v. *Wood*, *infra* (8. C. Law Rep. 3 Ch. App. 388). C. (the registered owner of the shares) subsequently proceeded against the jobber the plaintiff in the last case. It then appeared that C. on the 2nd of November, 1865, through his brokers, sold 100 shares to the defendant (the jobber). The sale-note expressed that the sale was by order of C. the plaintiff; that it was subject to the rules of the London Stock Exchange, and "with registration guaranteed;" also that payment was to be on the 15th of November following. Shortly before this date the defendant sent to the plaintiff's (C.'s) brokers, the name of H. as transferee, with the purchase-money; and the transfers were executed by the plaintiff to H., and handed to his brokers. The transfers not

having been registered, the defendant, in December, 1866 (see the last case), obtained a decree for specific performance by H. of the contract with him, and for indemnity. Meanwhile the Company had been wound-up, and the plaintiff's name, being still on the register, was settled on the list of contributories. He then filed a bill against the defendants for specific performance and indemnity. A decree for specific performance was granted. Before the suit came to a hearing, the plaintiff (C.) died, and his executor, having been placed on the list of contributories, revived the suit. The estate was insufficient; and the question was raised as to whether the defendant should be called upon to pay more than the dividend which C.'s estate could pay in respect of the claims for calls in the winding-up. It was held that the right to indemnify was not limited to the amount of dividend which C.'s estate would be able to pay, but that the executor was entitled to all the rights which his testator, if living, could have enforced; and it was ordered that the decree in *Evans* v. *Wood* (Law Rep. 5 Eq. 9), *infra*, should be followed: (*Cruse* v. *Paine*, Law Rep. 6 Eq. 641.)

The last case must rest on the ground that registration was guaranteed in the sale note that passed from the jobber to the registered owner of the shares. This, at least, would appear to follow from the next case.

Where the vendor of shares sold them through a jobber, under circumstances precisely similar to those in *Grissell* v. *Bristowe*, *supra*, and, having received the price, executed and handed over through his broker the transfer deeds to the nominees of the jobber, who received but never executed or registered the transfers. On the winding-up of the Company, the vendor, being compelled to pay calls upon the shares, filed a bill in equity against the jobber, claiming indemnity against the calls. It was held by the Court of Chancery Appeal that the contract between the vendor and the jobber must be interpreted according to the rules of the Stock Exchange, and that after the jobber had paid to the vendor his purchase-money, and given him the names of transferees to whom the vendor executed transfers, and after these transferees, through their brokers, had received the transfers and paid their purchase-money to the jobber, the liability of the jobber ceased, and that the bill should be dismissed: (*Coles* v. *Bristowe*, Law Rep. 4 Ch. App. 3.)

But the vendor of shares may sustain a suit in equity for indemnity against calls against the ultimate purchaser to whom the shares have come after passing through the hands of intervening jobbers.

The plaintiff, a holder of shares, agreed, through his broker, to sell them to a jobber for 202*l.* 10*s.* By the usage of the Stock Exchange, the transfer of the shares would not be made until a future day, and in the interval the shares might be again sold until a certain day, when the original buyer must name the person to whom the transfer was finally to be made. Accordingly, the shares were ultimately sold to the defendant for 145*l.* (a call having been made in the meantime), and the plaintiff executed and gave to the defendant a deed transferring the shares to him, the consideration named in which was 145*l.*, the difference being paid to the plaintiff by the jobber. The defendant never registered the transfer, and an order was made for winding-up the Company. The plaintiff was compelled to pay calls upon the shares, and filed a bill for specific performance and repayment, alleging that there had been a purchase by the defendant for 202*l.* 10*s.* The decision of Wood, V.C., appealed from, came before Lord Chelmsford, L.C., and it was held (overruling the decision of Wood, V.C.) that the fact of the call having

been made in the interval did not invalidate the contract supposing a valid contract to have been made.

The Lord Chancellor seemed to be of opinion that there was a contract between the plaintiff and defendant, but held that the contract alleged by the plaintiffs' bill was not proved. In delivering judgment Lord Chelmsford observed, "It is clear that a plaintiff must proceed *secundum allegata et probata*. Now by this bill the plaintiffs seek specific performance of an agreement with the defendant for the sale of these shares in consideration of a sum of 202*l.* 10*s.*, and that particular contract the plaintiffs pray that the defendant may be decreed specifically to perform. But is there proof of any such contract? The only proof given is this transfer, which is expressed to be in consideration of 145*l.* paid to the plaintiff Hawkins by the defendant; and if I were to make a decree for specific performance of the contract alleged by the bill, I should compel the performance of a contract into which the parties never entered." The appeal was accordingly dismissed: (*Hawkins* v. *Maltby*, Law Rep. 3 Ch. App. 188.)

Subsequently to this another bill was filed, alleging, among other things, that the plaintiff agreed to accept and did accept the defendant as the purchaser and transferee from the plaintiff Hawkins of the shares for the consideration money of 145*l.*, and that the defendant agreed to accept and did accept the plaintiff Hawkins as the vendor and transferor to him of the same shares for the consideration money of 145*l.*; that the Messrs. C. (the plaintiffs' brokers), as the agents, and with the authority of the plaintiffs, filled up the blank in the transfer with the proper amount of the consideration money, viz., 145*l.*, and that they delivered the transfer to Messrs. W. (the defendant's brokers) as the complete deed of the plaintiff Hawkins. The relief sought was the same in substance as that in the former bill. It was held by the Master of the Rolls that there was a contract between the plaintiff and the defendant entitling the former to be indemnified by the latter in respect of the calls, but that as the plaintiff knew that the defendant resisted his demand, he ought to have paid the calls at once, and could only recover interest on the calls at the rate of 4 per cent. from the day on which they became due, although the plaintiffs were compelled to pay interest on the calls at the rate of 11 per cent.: (S. C., Law Rep. 6 Eq. 505.)

A. sold to N., a stock-jobber, and B. purchased from N. five shares. According to the practice of the Stock Exchange, N. gave to A. the name of B. as the purchaser; and a transfer of the shares from A. to B. was executed by A. and B., and the purchase-money was paid by B. to A.; but B. was prevented by accidental absence from home from sending the transfer for registration until after the Company had stopped payment. The Company was wound-up, and the liquidators registered all transfers left at the office before the Company stopped payment, but refused to register the transfer from A. to B., and A. was made a contributory, and paid a call on the shares. It was held by the Master of the Rolls that A. was entitled to a decree against B. for repayment of the call and indemnity against future liability in respect of the shares.

He also held that, where the directors had a discretionary power of refusing to register transfers, if they disapproved of the transferee, and a transfer executed before, was not left for registration until after the commencement of the winding-up of the Company, in the absence of evidence that the transferee was objectionable, it would be presumed

that the directors would have registered the transfer : (*Evans* v. *Wood*, Law Rep. 5 Eq. 9.)

The Master of the Rolls observed in his judgment in this case, "this is a case in which specific performance may be had, and it is not necessary to refer it to a court of law merely to give damages." His Lordship distinguished the case from *Bermingham* v. *Sheridan* (33 Beav. 660), where his Lordship had held that the contract, under the circumstances of that case, could not be carried into execution, because part of the contract was that the name of the purchaser should be put upon the register, and that part could not be performed.

See also *Sheppard* v. *Murphy* (16 W. R. 948), a decision of the Irish Court of Chancery Appeal.

As to the court, after a voluntary winding-up had commenced, ordering by its decree that a defendant who had agreed to accept shares should procure so far as possible the shares to be transferred and registered in his name, notwithstanding sect. 131, *infra*, see *Robins* v. *Edwards*, W. N. 1867, p. 197 ; 15 W. R. 1065, *infra*.

On the instructions of W., shares in a Company, subsequently wound-up, were purchased for him by a broker, who, on the settling-day, also, on the instructions of W., gave the name of G. as the purchaser, and the deeds of transfer were made out in G.'s name, and delivered to him for execution, and he, for some time, retained possession of and dealt with them. W. informed G. that he had passed his name as transferee, and had also passed a cheque on the Company's bankers for the purchase-money to the debit of his firm. G. took no step to inform the vendor that he did not assent to the contract, though he did express his dissent to W. It was held, by Stuart, V. C., that the vendor was entitled to a decree for specific performance against G. Some remarks were also made on *Shepherd's case* (Law Rep. 2 Ch. App. 16), and *quære* as to whether the 35th section of this act does not apply to a case of delay on the part of a transferee in procuring registration : (*Shepherd* v. *Gillespie*, Law Rep. 5 Eq. 293 ; for a form of the decree, see *Ib.* 298 ; S. C. confirmed on appeal, Law Rep. 3 Ch. App. 764.)

A. bought fifteen shares, B. sold fifteen shares in the same Company. Through the intervention of various members of the Stock Exchange, B. executed a transfer to A., but owing to the Company being wound-up the transfer could not be registered. It was held, in a suit in equity, that A. was bound to indemnify B. against calls made on these shares : (*Hodgkinson* v. *Kelly*, Law Rep. 6 Eq. 496 ; 37 L. J. Ch. 837.)

With regard to questions such as those just treated of, see now "The Companies Act, 1867," s. 26, which provides that transfers may be registered at the request of the transferor.

Suits for specific performance are, of course, in the main, adjudicated upon by the court according to its usual equitable rules. Still, it is to be remembered that a plaintiff, seeking the active intervention of the court in a suit for specific performance, may sometimes fail to obtain redress, although the court might protect and enforce his equity in other respects. The plaintiff, in short, in a suit for specific performance should not only come into court with clean hands, but should also be armed with a very high equity.

Registration of Transfers.

As to the register of members to be kept by a Company, see sect. 25, *infra*.

Provision is made for the rectification of the register by sect. 35,

infra; and an application may be made under that section to determine the question whether the vendor or purchaser of shares ought to be deemed their registered owner (see the judgment of Turner, L.J., in *Re Russian* (*Vyksounsky*) *Ironworks Company*, *Stewart's case*, Law Rep. 1 Ch. App. 585); but no person is entitled to have his name placed on the register until he has complied with all the conditions required by the regulations of the Company: (*East Wheal Martha Mining Company*, 33 Beav. 119.)

See, also, *Re Imperial Mercantile Credit Association*, *Marino's case* (Law Rep. 2 Ch. App. 596), *post*.

Where a Company has a lien on shares that lien must be discharged before the Company can be required to register a transfer of the shares: (*Re London, Birmingham, and South Staffordshire Bank*, 5 N. R. 351.)

In like manner, where the regulations of a Company provide that the Company may refuse to register a transfer of shares in case the transferor is indebted to the Company in respect of calls, the calls must be paid before the Company can be required to register a transfer, but the Company has not the right to refuse to do so unless the call has been made before the transfer is presented for registration: (*Reg.* v. *Inns of Court Hotel Company*, 2 N. R. 397; 11 W. R. 806.)

In *Hubbersty* v. *The Manchester, Sheffield, and Lincolnshire Railway Company* (Law Rep. 2 Q. B. 59, 471), it was held, as to a Company governed by 8 Vict. c. 16, that sect. 16 of that act, which enacts that "no shareholder shall be entitled to transfer any share after any call has been made in respect thereof until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him," only applied to the transfer of shares on which a call could be and had been made, and had no application to the transfer of shares on which all the calls had been paid. The Company, therefore, was held bound to register a transfer of stock, although the transferor was the holder of shares on which there were calls unpaid.

Mellor, J., considered that the section in question did not restrict the transfer of shares, the amount of which is paid up, and therefore that it did not restrict the transfer of consolidated stock. "The Company," his Lordship observed, "have no power given them by any section to hold paid-up shares as a security for the amount of a call; they may bring their action against the shareholder for non-payment of the call, or they may forfeit his shares." Lush, J., went further, and did not deem it necessary to consider whether stock is or is not subject to the same restrictions as paid-up shares. His Lordship considered that sect. 16 is "pointed entirely to shares clogged with a pending liability to calls," and that the second part of the section applied only to cases within the first," "nor until he shall have paid all calls for the time being due on every share held by him." "I am, therefore, of opinion," his Lordship proceeded, "where a person holds shares of two classes, in one of which no call has been made, but a call has been made in respect of the other, he may transfer any or all of the shares in the first class without paying the calls due upon the second; and it is immaterial whether the calls in the first class have been fully paid up or not, because that case is not the subject of the enactment. But if a call is made, the shareholder cannot part with any share of that class without paying that call and all calls which are in arrear in respect of shares of that class. I think we ought to be very careful not to strain the words of this enactment lest we restrict the negotiability of shares in Companies." Every word of this judgment is valuable, and similar

clauses in Articles of Association will doubtless be construed in this manner.

As to impeaching a transfer of shares on the ground that calls are due on them after there has been a waiver of the right to prevent the transfer, see *Orpen's case*, 9 Jur. N. S. 615.

It has been held, in the case of *Reg.* v. *The General Cemetery Company* (6 E. & B. 415), that a Company is not bound to register complicated instruments of transfer.

If a Company wrongfully refuse to register a person who has a right to be registered, he may, of course, maintain an action against the Company: (*Daly* v. *Thompson*, 10 M. & W. 309.)

The property in shares will not pass under forged transfers even to *bonâ-fide* purchasers for value whose names are placed on the Company's register. The plaintiff, the registered owner of 1000 shares in a Company, in which the shares could only be transferred by deed executed by both transferor and transferee, employed a broker to sell for him some shares in another Company, which were also transferable by deed only. The broker represented to the plaintiff that it was necessary for him to execute ten blank forms of transfer. The plaintiff accordingly signed, sealed, and delivered to the broker ten forms of transfer in blank to be filled up by him for the transfer of the shares in the other Company. The broker only used eight of the blank forms for that purpose, and having stolen the certificates from a box deposited at a bank for safe custody, he feloniously filled up the two remaining forms as transfers respectively of 500 of the plaintiff's 1000 shares in the first-mentioned Company, and having forged the attestations, he delivered the transfers, together with the certificates, to *bonâ-fide* purchasers for value, and on their being presented to the Company they removed the plaintiff's name from the register of shareholders and placed thereon the names of the purchasers. It was held, in the Exchequer Chamber, that the transfers were void, and that there was no such negligence on the part of the plaintiff as estopped him from insisting that the property in the shares did not pass under the transfers: (per Cockburn, C.J., Crompton, J., Willes, J., Byles, J., Blackburn, J., and Mellor, J.; Keating, J., dissenting.) Negligence, to operate as an estoppel, must be the proximate cause of the loss: (*Swan* v. *The North British Australasian Company*, 2 H. & C. 175, in error; 32 L. J. Ex. 273; 10 Jur. N. S. 102.)

A *bonâ-fide* purchaser for value, under the circumstances stated, has, however, his remedy against the Company; and it was held *In the Matter of the Bahia and San Francisco Railway Company, Limited, and Amelia Trittin and others* (Law Rep. 3 Q. B. 584), *post*, that where a Company registered forged transfers of shares and issued certificates of registration to the persons who presented them, a *bonâ-fide* purchaser for value of the shares from those persons was entitled to recover from the Company, as damages for the loss of the shares, the value of the shares at the time when the Company first refused to recognise him as a shareholder, with interest at four per cent. from that time.

See also, on the subject of the registration of wrongful transfers, *Orr* v. *The Union Bank of Scotland*, 1 Macq. 513; *The Bank of Ireland* v. *Evans's Charity Trustees*, 5 Ho. Lords Cas. 389; *Davis* v. *The Bank of England*, 2 Bing. 393; and *Ashby* v. *Blackwell*, 2 Eden, 299.

Where the directors of a Company have the power by its articles to withhold their assent to a transfer, they cannot exercise that power without good reason. See *Poole* v. *Middleton*, 29 Beav. 646, and *Pinkett* v. *Wright*, 2 Ha. 120.

Where by the deed of settlement of a banking Company it was declared that no person should be entitled to become a transferee of a share unless he was approved by the court of directors, it was held that the court must exercise its power reasonably, and would be controlled by a court of equity; but, *quære*, whether it would be a reasonable ground of objection that the proposed transferee is the nominee of a rival bank, with which the shares have been deposited as security: (*Robinson* v. *Chartered Bank of India*, Law Rep. 1 Eq. 32; 35 Beav. 79.)

See, also, *Taft* v. *Harrison*, 10 Ha. 489, and *Bermingham* v. *Sheridan*, 33 Beav. 660, *supra*.

Where the directors have, by the articles of a Company, a right of veto as to transfers, they have the power, if the Company is in embarrassed circumstances, to come to a resolution not to register any more transfers at all: (*Re Joint-Stock Discount Company, Shepherd's case*, Law Rep. 2 Eq. 564.) Directors were not allowed to invalidate a transfer on the ground that their consent had been given informally according to the regulations of the Company: (*Bargate* v. *Shortridge*, 5 Ho. Lords Cas. 297.)

A transfer, made from a desire on the part of the transferor to escape from liability, is not bad where the directors have no veto, even though money should have been paid to the transferee for taking the shares, and the transfer falsely states money to have been paid to the transferor. And it appears there is a distinction between a transfer of shares which is fraudulent and void as against the transferee, and one which is so as regards the Company: (*Re Hafod Lead Mining Company, Slater's case*, 35 Beav. 391; 35 L. J. Ch. 304; 12 Jur. N. S. 242; 14 L. T. N. S. 95.)

With respect to a transfer to a man of straw, see also *Re Mexican and South American Company, Ex parte Hyam*, 29 L. J. N. S. Ch. 243; *Ex parte Budd, Re Electric Telegraph Company, Ireland*, 31 L. J. N. S. Ch. 4; *Ex parte Costello*, 30 L. J. N. S. Ch. 113; *Ex parte Hatton*, 31 L. J. N. S. Ch. 340; *Libri's case*, 30 L. T. 185; *Jessopp's case*, 2 De G. & J. 638; *De Pass's case*, 4 Ib. 544; and *Chinnock's case*, Joh. 714.

The articles of a Company provided that on proof of title and execution of transfer the Company should register the transferee, but that no transfer of shares should be made or registered after a call on such shares had been made until payment thereof. At a meeting of the board of directors the propriety of making a call was discussed. A shareholder present induced the directors to postpone consideration of the matter, and then, without informing them of his intention, transferred his shares to a pauper in order to escape all further liability. The directors having declined to register the transfer, it was held that the court would not, under sect. 35 of this act, rectify the register by removing the name of the transferor, and substituting that of the transferee. Rolt, L.J., however, at the same time saying, "I am still inclined to think that the transfer of shares expressly to escape the liability of a shareholder, so far as it is right to express any opinion on it in this case, does not necessarily vitiate the transfer, and I should not dispose of this case adversely to the appellant upon any such ground": (*Re National and Provincial Marine Insurance Company, Ex parte Parker*, Law Rep. 2 Ch. App. 685.)

The directors of a Company have no discretionary power, independently of powers expressly given to them by the Articles of Association, to refuse to register a transfer which has been *bonâ fide* made. Therefore, where a transferee gave an address at which he was only an occasional visitor, it was held (reversing the decision of the Master of

the Rolls) that the directors were bound to register the transfer, although the Company was at the time in difficulties, and the shares were sold by the transferor in order to get rid of his responsibility: (*Re Smith, Knight, and Co., Weston's case*, Law Rep. 4 Ch. App. 20.)

Where the articles of a Company provided that no transfer of any share should be entered in the books of the Company until it had been executed by the transferor and transferee, and entered on the register, and that the directors might refuse to register the transfer of any share unless the transferee was approved by the board, it was held that, irrespectively of any question as to whether a certain transfer of shares occurred before or after the commencement of the winding-up of a Company, a transfer which had not thus been registered and approved by the board was invalid, even though the board might have been *functus officio* at the time of the transfer: (*Re Overend, Gurney, and Co., Ex parte Walker*, 15 L. T. N. S. 32, Ch.)

Where it was shown to be the uniform practice of a Company to have shares transferred by deed executed both by transferor and transferee, although the Articles of Association did not prescribe any particular form of transfer, and expressly excluded Table A. in the second schedule to this Act, it was held that the directors were justified in not registering a transfer where the transfer deed had not been executed by the transferee. See *Re Imperial Mercantile Credit Association, Marino's case*, Law Rep. 2 Ch. App. 596, *post*.

The decision in *Marino's case* was followed by Malins, V.C., who held that when the Articles of Association require transfers of shares to be executed by both parties, the court has no power under sect. 35, *infra*, to rectify the register by removing the name of a transferor, unless the transfer has been executed by the transferee: (*Re Overend, Gurney, and Co., Musgrave and Hart's case*, Law Rep. 5 Eq. 193.)

For decisions on applications made under sect. 35, *infra*, to rectify the register by the entry on it of transfers, see the note under sect. 35, *infra*, especially the cases of *Re London, Hamburg, and Continental Exchange Bank, Ward and Henry's case* (Law Rep. 2 Ch. App. 431; 36 L. J. Ch. 462; 16 L. T. N. S. 254), *Watkin's case* (14 L. T. N. S. 696, Ch.), *Re National and Provincial Marine Insurance Company, Ex parte Parker* (Law Rep. 2 Ch. App. 685), *Re East Wheal Martha Mining Company* (33 Beav. 119), *Re Contract Corporation, Head's case and White's case* (Law Rep. 3 Eq. 84), *Re Joint-Stock Discount Company, Read's case* (36 L. J. Ch. 472), *Shepherd's case* (Law Rep. 2 Ch. App. 16), *Nation's case* (Law Rep. 3 Eq. 77), *Shipman's case* (Law Rep. 5 Eq. 219), *and Re Overend, Gurney, and Co., Ward and Garfit's case* (Law Rep. 4 Eq. 189; 36 L. J. 416, Ch.)

For decisions with regard to transfers of shares in a Company after the commencement of a winding-up, see sect. 98, *infra*.

Where a transfer of shares is registered before the second and confirmatory resolution to wind-up voluntarily has been passed by the Company, the transfer is complete in the absence of *mala fides*: (*Re Ottoman Company, Hornby's case*, 37 L. J. Ch. 929; W. N. 1868, p. 207; 16 W. R. 1164.)

23. *Definition of "member."*—The subscribers of the Memorandum of Association(*a*) of any Company under this act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed

and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member(*b*) of a Company under this act, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

(*a*) *The subscribers of the Memorandum of Association, &c.*]—See *The United Kingdom Ship Owning Company, Felgate's case* (2 De G. J & S. 456) as to an alteration made in a Memorandum of Association after signature and before registration; and, also, *Re Barned's Banking Company, Peel's case* (Law Rep. 2 Ch. App. 674), *infra*.

E. signed a Memorandum of Association as the holder of ten shares, and acted for a short time as a director of the Company. Other directors were then appointed, and he never afterwards had anything to do with the Company. No shares were ever allotted to him, and his name was never on the register. All the shares in the Company were allotted to other persons, but the allotment of some was not final, and they were not taken up. It was held (affirming the order of the Master of the Rolls) that E.'s name ought to have been on the register, and that he was a contributory in respect of ten shares: (*Re London, Hamburg, and Continental Exchange Bank, Evans's case*, Law Rep. 2 Ch. App. 427; 36 L. J. Ch. 501; 16 L. T. N. S. 252.)

The subscribers of the Memorandum of Association of a Company under this act are by this section bound to take as many shares as they have subscribed for, whether or not the shares are actually allotted to them, and this obligation is not satisfied by the allotment at a subsequent period of nominally fully paid-up shares. Therefore, where M. subscribed the memorandum of a Company for five shares, and eight months afterwards five fully paid-up shares, which the Company had agreed to allot to C. as part of the purchase-money for property sold to them by C., were by C.'s direction allotted to M., and the Company was wound-up. The Master of the Rolls held that M. was a contributory in respect of five shares upon which nothing had been paid: (*Re South Blackpool Hotel Company, Migotti's case*, Law Rep. 4 Eq. 238; 36 L. J. Ch. 531; 16 L. T. N. S. 271.).

In *Evans's case*, *supra*, the Lords Justices seem to have thought that if all the shares had been finally allotted, a question might have arisen respecting Evans's liability. At all events, there is nothing to prevent a subscriber from immediately transferring his shares, and so be subject only to the liabilities of a past shareholder. But the shares he subscribes for he must accept, or else will be conclusively deemed to have accepted them, and so be liable as a contributory in the event of the Company being wound-up.

In *Migotti's case*, the Master of the Rolls seems to have rested his judgment somewhat upon the lapse of time (eight months) that intervened between the registration of the Company and the allotment to Migotti of the paid-up shares in discharge of his liability under the memorandum.

Compare with *Migotti's case*, *Re Imperial Land Credit Company, Eve's case*, W. N. 1868, p. 208.

A person cannot sign the Memorandum of Association for shares generally, and afterwards say that some or all of them are paid-up shares, unless money or money's worth was actually paid by him or on

his behalf for those particular shares, and also if he sign the Memorandum of Association in respect of shares there stated to be paid-up shares, while they are not really paid-up, he will be liable to pay the amount due on the shares (in the event of a winding-up). The court cannot make the distinction between one set of shares and another which does not appear on the Memorandum of Association, and he is therefore liable for all. But if the distinction is already made on the Memorandum of Association, and the shareholder signs, for example, in respect of 100 shares generally, and in respect of 100 paid-up shares, then, though he may be made a contributory in respect of the first 100 shares, he is not a contributory in respect of the 100 paid-up shares.

A shareholder, who in consequence of his absence from the country had no notice of resolutions for an amalgamation, was placed on the register of the new Company. On his return he repudiated the arrangement, but in consequence of the non-payment of calls made on his shares, the directors declared them forfeited: it was held that under sect. 35 of this act, the court had power to order his name to be struck off the register, although his shares had been declared forfeited: (*Re the Bank of Hindustan, China, and Japan, Ex parte Higgs*, 12 L. T. N. S. 669, Ch.) See also the cases, *ante*, p. 23, on "Forfeiture."

Where a party signs the Memorandum of Association of a Company for X. shares, and afterwards applies for, and is allotted, Y. shares, a number greater than X., the shares for which he signed the memorandum form part of the allotment, and he will not be liable as a contributory both for X. and Y. shares, but for Y. shares only: (*Re Freen, Elliott's case*, 15 L. T. N. S. 406, Ch.; W. N. 1866, p. 342.)

N., a member of a firm, signed the Memorandum of Association of a Company for 100 shares. In accordance with a previous agreement between N., on behalf of his firm and the other promoters of the Company, forty-two shares only were allotted to N. and twenty-nine to each of the other two members of his firm, and calls were paid in accordance with the allotment. On a winding-up, it was held that N. must be on the list of contributories for the whole 100 shares, but that the fifty-eight shares allotted to his partners must be reckoned as part of the 100, and their names be removed from the register in respect of these: (*Re Masons' Hall Tavern Company, Nokes' case*, W. N. 1868, p. 238; 37 L. J. Ch. 624.)

The decision in this case appears to have proceeded upon the ground of mistake. The case appeared to Wood, L.J., "to fall precisely within sect. 35; two names having been, without sufficient cause, entered on the register, and another name omitted." Had the partner been allotted the 100 shares in his own right, and as a private transaction independently of the partnership, the case would seem to be governed by *Evans's case*, *supra*.

In another case, the manager of a Company had subscribed the memoraudum for forty shares. By an agreement sanctioned by the articles he was to have 250 paid-up shares as soon as the Company received 5000*l.* in respect of shares. When the Company had received less than 1500*l.* he was allotted 150 paid-up shares: it was held that the allotment of the 150 shares did not release him from his obligation in respect of the forty shares, and he was ordered to be put on the list of contributories in respect of them: (*Re London and County Coal Company; Re Bennet*, 16 L. T. N. S. 475, Ch.)

See also the decision under the repealed acts, in *Ex parte Currie, Re the Great Northern and Midland Coal Company*, 32 L. J. Ch. 421, on appeal.

In *Re London and County Coal Company* (16 L. T. N. S. 475), Wood,

V.C., though deciding against the subscriber in that particular case, because he accepted paid-up shares without any reference to his liabilities under the memorandum, plainly expressed an opinion to the effect that the subscriber "might for services rendered to the Company have required the Company to pay him either in shares or money, and it would be quite competent for him to stipulate that among the shares so to be allotted to him for his services the forty shares for which he originally subscribed should be included." There can be no doubt, therefore, that a subscriber to a memorandum for a certain number of shares may discharge his liability thereunder by accepting paid-up shares in return for moneys, with a *bonâ fide* contract with the Company: (*Re Great Northern and Midland Coal Company, Ex parte Currie*, 11 W. R. 46; *Re Universal Provident Life Association, Daniell's case*, 23 Beav. 568; *Re Cosmopolitan Life Assurance Company, Nicholl's case*, 24 Beav. 639.)

B. subscribed the Memorandum of Association of a Company for 450 ordinary shares and 138 paid-up shares. A clause in the articles provided that the Company might issue paid-up shares in satisfaction for services or money's worth given to the Company. It was admitted, however, that B. could not be considered as entitled to avail himself of this clause. The Master of the Rolls held that B. was a contributory in respect only of the 450 shares, but not of the 138 paid-up shares. His Lordship argued thus: If the director had the power to issue these paid-up shares, "and he had the shares in respect of which the contract was made, he could not, being a holder of paid-up shares, be put on the list of contributories except by his own consent. If they had not the power the shares are nothing, and no shareholder is deceived, because he had notice of the transaction." His Lordship seems to have thought that where a distinction appears on the Memorandum of Association between ordinary and paid-up shares, and a person subscribes for some of the former class and also for some of the latter, he is a contributory only as to the former and not as to the latter, even though in fact nothing has been paid up on them, either in money or money's worth. "But," continues his Lordship, "when he subscribes for paid-up shares alone, and they are not paid up, then the subscriber is liable to calls on all the shares": (*Re South of France Company, Baron De Beville's cose*, Law Rep. 7 Eq. 11.)

As to paid-up shares, see now sect. 25 of "The Companies Act, 1867," *post*.

(*b*) *Who has agreed to become a member, &c.*]—Three things are required to establish a complete contract to take shares—first, application for shares; secondly, allotment; thirdly, that the allotment should be communicated to, and acquiesced in, by the shareholder: (*Re Saloon Steam Packet Company, Ex parte Fletcher*, 37 L. J. Ch. 49.)

The Court of Chancery Appeal thus decided, affirming the decision of Stuart, V.C., and distinguishing *Bloxam's case* and *Cookney's case*. See *infra*, *Re Universal Banking Corporation, Gunn's case*, Law Rep. 3 Ch. App. 40.

See, also, *Re Peruvian Railways Company, Wallis' case*, W. N. 1868, p. 221.

A. filled up a blank form of application, by which he agreed to accept a certain number of shares in a Company, or any less number which might be allotted to him; and he paid a deposit, for which he received a banker's receipt. No shares were ever allotted, but he never made any formal claim for repayment of his deposit, which the Company used. The Company was wound-up before it had commenced its intended operations, and A. was placed by the Master of the Rolls on the list of

contributories. But, on appeal, it was held by the Lords Justices that the contract was only to accept shares when an allotment of them should have been made, and that until allotment there was no complete contract, and, consequently, that A. was not a contributory: (*Re the Adelphi Hotel Company, Best's case*, 2 De G. J. & S. 650; 34 L. J. Ch. 523, on appeal; 11 Jur. N. S. 498; 12 L. T. N. S. 480.)

A. B. agreed, verbally, to take 100 shares in a limited Company, paying 1*l.* per share as deposit, and stipulating for the return of the 100*l.* if he did not get the shares in a few days. By the terms of the prospectus for launching the Company, 2*l.* per share was payable upon allotment, in addition to the deposit. The shares were allotted in a few days, but no notice of allotment was given to A. B., who, on his part, did not apply for the shares. Shortly after the Company became defunct. It was held, affirming a decision of the Master of the Rolls (Knight Bruce, L.J. *hæsitante*), that the contract to accept the shares became complete on allotment; that it was the duty of A. B. to have applied for the shares and paid the 2*l.* per share; that neither his default in this respect, nor the omission by the Company to give notice of the allotment, exonerated him; and, consequently, that A. B. was liable as a contributory: (*Ex parte Bloxam, Re the New Theatre Company*, 33 L. J. Ch. 574, on appeal; 10 Jur. N. S. 833; 10 L. T. N. S. 772.)

See, also, *Cookney's case*, 26 Beav. 6; 3 De G. & J. 170.

For observations by Lord Cairns on *Bloxam's case*, see *Re Richmond Hotel Company, Pellatt's case*, Law Rep. 2 Ch. App. 527, *infra*.

Where a person applies for shares in a Company, and shares are allotted to him, he will not be constituted a member of the Company unless he has notice of the fact of the allotment. It is not, however, necessary that there should be a formal notice sent to him, if it appears that he was made aware that the Company had accepted his application. The mere entry of his name on the register of shareholders is not sufficient for this purpose.

F. applied for, and paid the proper deposit on, shares in a Company, with the view, as he alleged, of becoming qualified as a director, but his letter of application did not make this a condition. He afterwards attended the board of directors and was present when an allotment was made to him of the shares for which he had applied, but of which he seems not to have been aware. Subsequently, on his request, the directors cancelled the allotment to him and repaid him his deposit. There was no evidence of there ever having been any express notice to him of the allotment. It was held that the contract was complete and binding, and that the directors had no power to cancel the allotment; (*Re Saloon Steam Packet Company, Ex parte Fletcher*, 37 L. J. Ch. 49.)

H. applied in writing for ten shares in a Company, and the directors allotted to him ten shares; after the allotment, but before it was communicated to H., he withdrew his application: it was held that he did not agree to accept the shares: (*Re National Savings Bank Association, Hebb's case*, Law Rep. 4 Eq. 9; 36 L. J. Ch. 748; 16 L. T. N. S. 308.)

The allotment must be made within a reasonable time after the application. The defendant, in an action for non-acceptance of shares, applied for shares on the 8th of June, but no allotment was made till the 23rd of November. On the 8th of November he withdrew his application. The facts in another action were the same, except that the defendant had never withdrawn his application: it was held that the allotment must be made within a reasonable time, that it was not so made, and, therefore, that neither defendant was bound to accept the

shares allotted: (*Ramsgate Victoria Hotel Company* v. *Montefiore*; *Same* v. *Goldsmid*, Law Rep. 1 Ex. 109; 35 L. J. Ex. 90; 13 L. T. N. S. 715.)

In October, 1866, A. received from a private source a document purporting to be a prospectus of a Company immediately about to be started, and to allot shares on the 14th of October, upon which he applied for ten shares, and paid the required deposit to the bankers named in the document.

In January, 1867, A. received the authentic prospectus of the Company, which differed in many important particulars from the document first seen by him. On the 1st of February the directors met for the first time, and proceeded to allot the shares to A., among other persons. On the 7th of February (whether before receiving his letter of allotment or afterwards was left uncertain by the evidence) A. wrote to decline taking any shares, and requesting a return of the deposit paid by him in October; and, in a subsequent letter, expressed his determination not to take any shares in the Company whether allotted to him or not. No further communication took place between A. and the Company until October, 1867, when legal proceedings were threatened in case the arrears of call were not at once paid. It was held that, having regard to the four months' interval between the application for shares and the allotment to him, A. was entitled to a *locus penitentiæ*, and that it was not too late for him on the 7th of February (assuming him to have received the letter of allotment on the 3rd) to reconsider the matter and repudiate the shares: (*Re Bowron, Baily, and Co., Baily's case*, Law Rep. 5 Eq. 428; affirmed on appeal, S. C., 3 Ch. App. 592.)

P. applied for ten shares in a Company, the prospectus of which stated that 1*l.* was to be paid on each share on application, and 2*l.* more on allotment. The directors accepted the application on the 1st of August, and on the 4th they wrote to P., stating that they allotted the shares on payment of the balance of the allotment money on or before the 11th instant. Before that day arrived P. discovered that there were misrepresentations in the prospectus, and wrote to the directors repudiating the shares, and claiming a return of the deposit. P. still refusing to pay the balance payable on the allotment, an action was brought against him in the Court of Queen's Bench, to which P. pleaded several pleas, denying his liability, and alleging that he had repudiated the shares on the ground of misrepresentation in the prospectus. P.'s name was entered on the register as on the 1st of August, but the *res gestæ* raised a different presumption. While the action against P. was pending, the Company was ordered to be wound-up. The Lords Justices held (affirming the decision of Malins, V.C.), that the contract to take the shares was *in fieri* until the 11th of August, and that P. had a right to repudiate them up to that date. His name, therefore, was removed from the list of contributories: (*Re Warren's Blacking Company, Pentelow's case*, Law Rep. 4 Ch. App. 178.) It seems the actual date of the entry of P.'s name on the register was unimportant, since he repudiated the contract while it was *in fieri*. The letter of the secretary to P. introduced a new date into the contract, and consequently suspended its legal completion until that new term was accepted by P.

Where a director of a Company had signed the Articles of Association, which required as the qualification of a director that he should hold twenty-five shares, and had applied for that number of shares, and attended several meetings of the board, but retired from the direction before the allotment of shares took place, and the directors afterwards refused to allot him any shares, and returned the deposit, it was held that

he was not liable as a contributory on the winding-up of the Company: (*Re General International Agency Company, Chapman's case*, Law Rep. 2 Eq. 567.)

By the Articles of Association of a Company it was declared that no person should be eligible as a director unless he held fifty shares at the least. One of the persons declared director by the articles had signed the Memorandum of Association for twenty-five shares only. He was held not liable as a contributory for fifty shares. It was also held that where a qualification in shares is required, that qualification cannot be got in nominally paid-up shares: (*Re Llanharry Hematite Iron Company, Ex parte Stock, Ex parte Roney*, 10 Jur. N. S. 812, Ch., on appeal; 10 L. T. N. S. 770.)

But where the possession of a certain number of shares is declared by the articles necessary to render a person "eligible" to be a director, this qualification does not apply to directors nominated by the articles, but only to directors afterwards elected.

Where a person applies to a Company for a certain number of shares in it, but before registration, or anything done to fix his liability in respect of his application, he expresses a wish to diminish the number of the shares, and the Company assents to his proposal, there is nothing to prevent such an alteration of the original transaction. The mere facts of the acceptance of the shares first applied for, and the payment of the first deposit or call on them, do not make the original contract so irrevocable as that both parties cannot dissolve it.

Where, therefore, M. applied for and accepted 200 shares in the E. Company and paid a call of 500*l.* in respect of them, but before registration, or anything done to make him liable for them, expressed a wish to restrict his application to fifty shares only, and that was acquiesced in by the Company, who, however, afterwards declared the 150 shares forfeited, as no call had been paid on them, and still kept the name of M. on the register for the 200 shares, it was held that he was only liable as a contributory in respect of the fifty shares: (*Re Exhall Coal Mining Company, Miles's case*, 10 L. T. N. S. 896, Ch.)

Qualified Contracts for Shares.

The Leeds Banking Company, established under the provisions of 7 Geo. 4, c. 46, having decided upon issuing their reserved shares, addressed a circular to the shareholders, offering them one new share for every five shares held by them, to be paid for on a day named, and requesting to know whether in the event of any shares remaining they would wish to have any additional shares. A. was offered four shares in respect of the twenty held by him, and in answer to the circular he agreed to take his proportion of allotments, and asked for additional shares if he could have them. The reply stated that the directors had allotted him four extra shares in addition to the four shares already accepted by him. In this reply there was a further clause, not contained in the first circular, that if the amount were not paid by the day named, the shares would be forfeited. Nothing further was done, and no payment was made in respect of any of the shares. It was held that a contract was constituted in regard to the first four shares by the offer and the acceptance, but the contract was not complete as to the four extra shares by reason of the clause of forfeiture, which was a new term added to the contract and not accepted by payment within the time specified: (*Re Leeds Banking Company, Addinell's case*, Law Rep. 1 Eq. 225; 11 Jur. N. S. 965; 13 L. T. N. S. 456.)

Some of the same shares were offered to H. to be paid for on the 1st of October, and he replied, asking for his proportion (forty shares), allowing him till February to pay for them. No answer was given to this; but the manager, in preparing the list, inserted H.'s name for forty shares, writing opposite to it, "accepted for February." The board afterwards passed a resolution that the allotment should be according to the discretion of two of the directors and the manager. Soon afterwards H. was informed that his proportion (forty shares) had been allotted to him. The Company was shortly afterwards wound-up, without anything further having been done. It was held (affirming the decision of Kindersley, V.C.), that H. was not a contributory as to the forty shares, either on the ground that there was no acceptance of the new time introduced by H., or that the delegation of authority by the directors was unwarranted by the deed of settlement: (*Re the Leeds Banking Company, Cooper Howard's case*, 12 Jur. N. S. 655, Ch., on appeal; Law Rep. 1 Ch. App. 561; 14 L. T. N. S. 747.)

The last two cases were decided evidently upon the ground that where a contract is entered into by correspondence the assent of the party applied to should be to the precise terms of the applicant; else the intended assent, by introducing a new term, would require to be accepted by the other party before a verbally binding contract is entered into between them. This is what distinguishes the last two cases cited from *Barrett's case* (2 Drew. & Sm. 415; S. C., 3 De G. J. & S. 30, on appeal), *infra*, in which Barrett paid for the shares, and so accepted the variation from the terms first proposed

In May the directors of the same Company sent circulars offering the reserved shares to the existing shareholders at 30*l.* per share, the amount to be paid on or before the 1st of October; if paid before that time, interest at 5*l.* per cent. to be allowed, and the allottees to be entitled to a quarter's dividend at the end of the year. B., a shareholder, agreed to take twenty-two of these shares on the above terms, and paid the 30*l.* per share. On the 16th of September the bank stopped payment, and on the 24th a petition for winding it up was presented, on which an order was subsequently made: it was held (by Turner, L.J., affirming the decision of Kindersley, V.C., Knight Bruce, L.J., dissenting) that B. was a contributory in respect of the twenty-two shares: Also (by Turner, L.J.), that the misrepresentations in the report could not be regarded as a proximate cause of B.'s contract to take the shares so as to enable him to avoid that contract: Also (by Turner, L.J., Knight Bruce, L.J., dissenting), that the contract was not that B. should purchase the shares on a future day, but become the immediate proprietor of them, subject to the terms as to interest and dividends: (*Re the Leeds Banking Company, Barrett's case*, 3 De G. J. & S. 30, on appeal.)

The same Company offered their reserved shares to shareholders, and the executors of deceased shareholders, in proportion to the amount of their shares. The form of application sent to the executors of one of the deceased shareholders was filled up by M., who was a relation of the surviving executrix, without her authority; and he therein asked for new shares to be allotted to himself. The directors allotted the additional shares to the executors, but sent the notice of the allotment to M. M. wrote a letter thanking them for the shares, but did not pay the deposit on them. The Company was shortly afterwards wound-up; and it was held (reversing the decision of Kindersley, V.C.), that there was no complete contract between M. and the Company that he should take the shares, and that he could not be placed on the list of contribu-

tories. *Dobson's case* (Law Rep. 1 Ch. App. 231), *infra*, was distinguished: (*Re Leeds Banking Company, Mallorie's case*, Law Rep. 2 Ch. App. 181; 36 L. J. Ch. 141; 15 L. T. N. S. 458.)

Dobson's case, *Re Leeds Banking Company* (Law Rep. 1 Ch. App. 231), decided that executors who accepted the shares offered as above stated, should be put on the list of contributories in their own right, and not in their representative character, and that the fact that the new shares were offered to and accepted by the executors in their representative character, and that the directors had no power to offer the shares to them in any other character, did not preclude the executors from being personally liable as between them and the other contributories. The decision in this case was founded upon the ordinary rule of law, that an executor, carrying on trade as executor, is still personally liable for the debts he contracts in his trading capacity. This liability can of course be restricted by express contract, but no such express agreement was made in *Dobson's case*.

L. applied for 1000 shares in a Company as trustee for M.; no letter of allotment was sent to L., but his name was put upon the register in respect of these shares, and advertised as a director; he attended a meeting of directors, and took no steps to have his name removed for two years. It was held (affirming the order of Stuart, V.C.) that he had agreed to become a member and was a contributory in respect of the 1000 shares: (*Re International Contract Company, Levita's case*, Law Rep. 3 Ch. App. 36.)

S. and C. agreed with the directors of a Company to become agents for the Company on certain terms, one of which was that S. and C. should subscribe for shares of the Company to the amount of 600*l.*, and duly pay the instalments and calls thereon. S. and C. never applied for shares, but about ten months afterwards the directors passed a resolution allotting them shares to the amount of 600*l.*, and placed them on the register as holders of those shares, but no notice was given to S. and C. of the allotment or registration until after an order had been made for winding-up the Company. It was held that S. and C. did not become the equitable owners, or liable to be placed on the register as holders, of any shares, until the fact of the allotment was communicated to them, and that, as no such communication was made before the winding-up, they were not contributories, and were entitled to have the register rectified by removing their names from it: (*Re Anglo-Danish and Baltic Steam Navigation Company, Sahlgreen and Carrall's case*, Law Rep. 3 Ch. App. 323.)

A resolution was passed at a meeting of directors reciting a list of shareholders, in which the appellant, who was a director, was put down for fifty shares. The appellant was not present at the meeting, and denied all knowledge of the resolution although he was present at the next subsequent meeting. It was held, that in the absence of proof that the minutes of the previous meeting were duly read and confirmed at the subsequent meeting (which it appeared was not always done), that the appellant was not bound by the insertion of his name for fifty shares: (*Re Llanharry Hematite Iron Company, Tothill's case*, Law Rep. 1 Ch. App. 85.)

A., on being invited to become a director of a banking Company about to be established, gave a verbal assent, provided he should be satisfied that a certain proportion of the capital had been subscribed, and that certain persons named in the prospectus as directors would actually join the board. He attended one board meeting, and so far took part in

the business as on that occasion to sign a cheque together with one of the directors. On receiving, a few days afterwards, a letter of allotment of shares necessary to qualify him, he at once returned it, declining at the same time to act as director, as he was not satisfied upon the two points stipulated for by him. The secretary wrote back, stating that A.'s "resignation" had been accepted. A. had nothing more to do with the bank. He was held not to be liable as a contributory: (*Re Peninsular, West Indian, and Southern Bank, Austin's case*, Law Rep. 2 Eq. 435.) Compare with this case, *Re the Land Credit Company of Ireland, Ex parte Munster*, 14 L. T. N. S. 723, Ch.; 14 W. R. 957.

A., upon his appointment as agent to a limited assurance Company, agreed to take shares upon the terms that the payment for them should be deducted from his commission as agent, and no deposit was ever paid by him upon them, but he was registered as the holder of the shares. The Company, very soon after his appointment, dismissed him, but, as he contended, wrongfully. On the winding-up of the Company it was held by the Lords Justices (reversing the decision of the Master of the Rolls), that the Company's cancellation of A.'s appointment as agent, whether justifiable or not, could not operate as a cancellation of A.'s agreement to become a shareholder, and that (subject to any question of account that might arise as to payment for the shares), A. was liable as a contributory: (*Re the Life Association of England, Thompson's case*, 34 L. J. Ch. 525, on appeal; 11 Jur. N. S. 574; 12 L. T. N. S. 590; on appeal, 12 L. T. N. S. 717.)

S., a railway carriage builder, had an interview with the secretary of a Company which had just been formed for dealing in carriages, as to S. taking shares, and paying the calls in rolling stock. He then sent in an application requesting the directors to allot him 2000 shares, all future calls to be paid "in rolling stock, as arranged." The directors returned no answer, but put his name on the register of shareholders for 2000 shares. He never received notices, nor was treated as a shareholder: it was held (affirming the decision of Wood, V.C.), that there was no concluded contract by S. to take shares, and that he was not a contributory: (*Re Rolling Stock Company of Ireland, Shackleford's case*, Law Rep. 1 Ch. App. 567; 35 L. J. Ch. 818; 15 L. T. N. S. 129.)

In July, 1863, E. applied for 150 10*l.* shares in a Company on the faith of an agreement with a promoter (subsequently ratified) that he should only pay 30*s.* per share in cash, and that the further calls should be set off against goods. E. paid a deposit of 10*s.* per share, and the shares were allotted to him in August, when he paid the further sum of 20*s.* per share. He received the certificates and was entered on the register. No goods were ordered, and the Company having been ordered to be wound-up, it was held (reversing the decision of Wood, V.C.) that E. must be on the list of contributories. The Lords Justices left it an open question whether E. could not sustain a claim against the Company to be indemnified against the calls, under the collateral contract to take shares only in payment for goods supplied: (*Re Richmond Hill Hotel Company, Elkington's case*, Law Rep. 2 Ch. App. 511.)

In July, 1863, P. applied for fifty 10*l.* shares in a Company on the faith of an agreement with a director that he should receive orders for goods to the extent of at least 1000*l.*; that he should only pay 30*s.* per share in cash, and that the calls for the rest should be set off against the goods. He paid, on application, a deposit of 10*s.* per share. The agreement was, with an additional term, ratified by the board of directors in November, 1863. In December, 1863, P. wrote to the Company

declining to proceed further in the matter. In July, 1864, the secretary wrote to P., requiring him to pay 3*l.* 10*s.* per share for calls. No letter of allotment had ever been sent to P., but he had been put on the register. In November, 1866, an order was made for winding-up the Company. It was held (affirming the decision of Wood, V. C.), that P. was not a contributory, for that he had only agreed to take shares upon the conditions of the special agreement as to set-off, which, if *ultra vires* of the directors, was not binding on the Company, and, therefore, for want of mutuality, not binding on P.; and, if *intra vires*, was still not enforceable against P., because the stipulations on behalf of the Company had become incapable of being performed.

Lord Cairns, remarking on *Bloxam's case* (33 Beav. 529; 33 L. J. Ch. 574), *supra*, said: "*Bloxam's case* appears to have turned on special circumstances, creating a previous obligation to give him the shares if he applied for them. I cannot, therefore, consider an application for shares, followed by a registration not communicated to Mr. Pellatt, to constitute a completed transaction:" (*Re Richmond Hill Hotel Company, Pellatt's case*, Law Rep. 2 Ch. App. 527.)

See, also, *Re Royal Hotel Company of Great Yarmouth, Hann, Clayton, and Company's case* (W. N. 1868, p. 85), in which the decision in *Pellatt's case* was followed.

Such agreements as those contained in the preceding cases are now affected in a most important manner by sect. 25 of "The Companies Act, 1867," *infra*. Henceforward every share shall be deemed to have been issued, subject to the payment of the whole amount thereof in cash, unless the conditions contained in that section are complied with.

S., a builder, wrote to the directors of an hotel company to the effect that if the contract for making alterations in the hotel were secured to him, he agreed to subscribe for 300 shares, and pay the deposit as soon as he was satisfied that 1500 shares, including his, had been subscribed for. The calls on the shares were to be set off against the amount due on the contract. The directors passed a resolution accepting the terms of his letter. They then sent an unconditional notice of allotment of 300 shares to S., and entered his name for that amount on the register. S. did not return the notice of allotment; but having ascertained that the resolution had been passed, and 1500 shares taken up, sent in a formal application, and paid the deposit. No further allotment was made to S.; the certificates were not delivered to him, nor was he called upon to pay any calls. Shortly after the allotment the architect was instructed by the directors to make drawings of the proposed alterations in the hotel for the purpose of preparing a contract, and S. prepared estimates, but no contract was ever drawn up. He attended two meetings of shareholders, at which it was expected the subject of the contract was to be considered. He did various works for the Company, for which he received sums amounting to 619*l.* But he was not called upon to pay the remainder of the allotment money or any of the subsequent calls that were made. Shortly afterwards the Company was wound-up voluntarily. The Lords Justices held (affirming the decision of the Master of the Rolls), first, that the contract to take the shares was conditional on S. having the contract to make the alterations in the hotel; secondly, that the condition was not performed by the mere passing of the resolution that S. should have the contract; thirdly, that S. had not waived the condition by not returning the notice of allotment, or by attending the meetings of shareholders. S. was, therefore, held not to be a contributory: (*Re Aldborough Hotel Company, Simpson's case*, Law Rep. 4 Ch. App. 184.)

Lord Justice Selwyn, when delivering judgment in this case, observed, "two questions are involved in this case; first, whether the contract to take the shares was conditional; secondly, if so, whether the condition was complied with." His Lordship then, after referring to the distinction taken by Lord Cairns, in *Elkington's case* (Law Rep. 2 Ch. App. 522), *supra*, between a contract "to become a shareholder *in præsenti* with a collateral agreement as to what should be the effect of becoming" a shareholder, and a conditional contract for shares, decided both the points he first referred to in favour of S. Cases of this sort must be carefully considered according to their circumstances respectively.

R., being desirous of being appointed local manager for a banking Company, was informed by the agent of the Company that it would be a condition of his appointment that he should take 100 shares. He accordingly filled up an application for 100 shares in the usual form, which the agent forwarded to the directors with a letter from himself stating that the application was made on condition of R.'s being appointed local manager. The shares were allotted to him, but in consequence of his not being able to pay the deposit, the directors refused to give him the appointment. It was held that R.'s application for shares was conditional, and that he did not become a shareholder in the Company.

H., being desirous of a similar appointment, made an application in the usual form for fifty shares through the Company's agent, but no letter was sent to the directors stating that the application was conditional on H. obtaining the appointment. The shares were allotted unconditionally to H., who afterwards declined the appointment, but did not formally repudiate the shares. It was held that the application for shares was unconditional, and that he became a shareholder in the Company: (*Re Universal Banking Company, Rogers's case, Harrison's case*, Law Rep. 3 Ch. App. 633.)

Two persons agreed to sell certain property to a Company for a price to be paid, part in fully paid-up shares, part in shares partly paid-up, and the remainder in cash, as and when the Company should receive any money in respect of shares subscribed for over and above the first 1000*l.*; and it was provided that if the shares and cash should not be paid within two years from the date of the agreement, the agreeement should be void, and that any moneys and shares paid thereunder should be retained as liquidated damages for breach of the agreement. The shares were issued to the vendors and their nominees, but the event on which the cash was to be paid never happened, and the Company was wound-up within two years from the date of the agreement. It was held that the vendors must be placed on the list of contributories in respect of their shares; but that they were entitled to a lien on the property sold for the amount of cash which had not been paid: (*Re Patent Carriage Company, Gore and Durant's case*, Law Rep. 2 Eq. 349.)

Rescission of Contract.

If a person has been induced to enter into a contract to take shares by fraud or material misrepresentation, it cannot be enforced against him either at law or in equity, and he may rescind it, and repudiate the shares, if he do so within a reasonable time after notice of the fraud.

A contract to take shares in a Company may also be rescinded if entered into on the faith of a prospectus that represented the objects

of a Company differently from the description contained in the Memorandum of Association.

Rescission on the Ground of Fraud.

In order to entitle a party to rescind a contract, it is sufficient to show that there was a fraudulent representation as to any part of that which induced him to enter into the contract. But when there has been only an innocent misrepresentation, it is not ground for a rescission, unless it was such as that there is a complete difference in substance between the thing bargained for and that obtained, so as to constitute a failure of consideration.

A Company, already carrying the intercolonial mails under contracts with the Government of New Zealand, issued a prospectus that they were "prepared to receive applications for new shares in order to enable the Company to perform the contract recently entered into with the Government of New Zealand, for a monthly mail service between Sydney, New Zealand, and Panama, in correspondence with the West Indian Mail Company's steamers between Southampton and Panama." K., induced by this statement in the prospectus, applied for and obtained some of the new shares. The contract alluded to in the prospectus had been made by the Company with the agent of the New Zealand Government, both parties *bonâ fide* believing that he had authority to make it; but it turned out that he had no such authority, and the Government refused to ratify the contract: it was held that the prospectus by implication alleged that there was a binding contract, but being an innocent misrepresentation it did not entitle K. to rescind the contract under which he became a shareholder, as it did not affect the substance of the matter, K. having got shares in the very Company for which he had applied, and which shares were of considerable value: (*Kennedy* v. *The Panama, &c. Royal Mail*, Law Rep. 2 Q. B. 580; 36 L. J. 260, Q. B.)

Where, to an action at law by a Company against a shareholder for calls, the defendant pleaded that he was induced to become a shareholder by the fraud of the plaintiffs, that he had never recognised, since notice of the fraud, any rights or liabilities in him as such shareholder, nor received any benefit from his shares, and that within a reasonable time after notice of the fraud he had repudiated the shares and given notice to the plaintiffs of his repudiation, it was held, on demurrer, a good plea, and that although it did not aver that the defendant was an original allottee of shares: (*Bwlch-y-Plwm Lead-Mining Company* v. *Baynes*, Law Rep. 2 Ex. 324.) The case of *The Glamorganshire Iron and Coal Company* v. *Irvine* (4 F. & F. 947) was to the same effect as the last case, and was referred to in it.

Where a person has been drawn into a contract to purchase shares by the fraudulent misrepresentations of directors (or their fraudulent concealment), and where the directors, in the name of the Company seek to enforce that contract, or where the person who has been deceived institutes a suit to rescind it, the misrepresentations are imputable to the Company and the purchaser cannot be held to his contract; and (by Chelmsford, L.C.), if an untrue statement is made founded on a belief destitute of all reasonable grounds, or which the least inquiry would have immediately corrected, it may fairly and correctly be characterised as misrepresentation and deceit: (*The Western Bank of Scotland* v. *Addie*, Law Rep, 1 H. L., Scotch App., 145.)

Where a person believes that he has been misled, by representations

which are false or deceptive, into taking shares in a proposed Company, it is his duty to raise the objection at an early period, and to be guilty of no needless delay. The same rules as to false or deceptive representations which are applicable to contracts between individuals are also applicable to contracts between an individnal and a Company. No misstatement or concealment of any material facts or circumstances ought to be permitted in a prospectus issued to invite persons to become shareholders in a projected Company. The public are, in such a case, entitled to have the same opportunity of judging of everything material to a knowledge of the true character of the undertaking as the promoters themselves possess. Where there has been fraudulent misrepresentation, or wilful concealment of facts, by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it, that he might have known the truth by proper inquiry. The phrase "available capital of the Company" is not a true, but is a deceptive, description of capital which may be raised under the borrowing powers conferred upon directors. Where a prospectus described a contract for the construction of a line of railway as entered into at "a price considerably within the available capital of the Company," and the facts were, that from the nominal capital of 500,000*l.* were to be deducted 50,000*l.* as the price of purchasing the concession to make the railway, and the contract price for making it was 420,000*l.*, the representation was held to be untrue and deceptive.

A prospectus of a railway Company stated that "the engineer's report, maps, plans, &c., may be inspected, and further information obtained at the offices of the Company." An applicant for shares signed the printed form of application, in which, as usual, it was stated that he agreed to be bound by the conditions and regulations contained in the Memorandum and Articles of Association. An examination of all these papers would have afforded him the information, the want of which he alleged as a ground for rescinding his contract. Trusting to the representations, he did not examine all; and it was held, that his neglect to do so was no answer to his demand to be relieved from the contract. A bill was filed to rescind a contract on the ground of there having been misrepresentations of facts. Relief was given in the court below on only some of the alleged grounds. An appeal was brought against the decree; and it was held that it was open to the respondent to sustain the decree on any or all the grounds stated in his bill: (*The Central Railway Company of Venezuela*, apps., v. *Kisch*, resp., Law Rep. 2 H. L. 99; 16 L. T. N. S. 500.)

A Company was formed for the purpose of making a railway in Switzerland under a concession vested in H., a contractor, and transferred by him to the Company under an agreement by which he obtained the contract for making the line, the terms of the contract being stated in the Articles of Association. Before the formation of the Company H. agreed to give S., who afterwards became the chairman of the board of directors, 2000*l.* worth of paid-up shares, and after the Company was formed he paid the deposit and allotment moneys on the shares taken by S. and several other directors. H. also gave to C. and W., who afterwards became directors, bills for 10,000*l.*, they undertaking to renew them at 5 per cent. interest until H. should receive "the promotion money or other payments" from the Company. C. and W. for the bills were to procure a credit Association to bring out the Company. The directors issued a prospectus not containing any misrepresentations, but not mentioning the transactions between H. and

the directors. The Master of the Rolls held that there was no such suppression of material facts in the prospectus as to entitle a person who had been induced by A. to take shares in the Company to be relieved from his shares: (*Heymann* v. *European Central Railway Company*, Law Rep. 7 Eq. 154.)

The Master of the Rolls considered that the transactions in question in this case could not be considered as dealings between a trustee and his *cestui que trust*, and so avoidable, and that as the profits of the contract would all belong to H., therefore, S., C., and W., derived no advantage from it. The plaintiff, too, had notice of the contract; what he did not know was that the qualification of S. had been paid by another person. But at all events his Lordship thought that even if C. and W. received money improperly from the Company, the shareholders could not, upon that ground, leave the Company. The plaintiff did not take any steps to repudiate his contract for three months after becoming aware of the alleged *suppressio veri*. This last ground was perhaps not the least influential motive for the decision at which his Lordship arrived in this case.

In a case of this kind the recalcitrant shareholder has no remedy against the directors, if he fails against the Company, because there is no privity between the directors and him.

The prospectus, which was circulated after the incorporation of a limited Company, commenced by stating, in prominent type, that more than half the first issue of 5000 shares had already been subscribed for, applications being invited for the "remaining shares," and that the Company had contracted for the purchase of two properties, viz., B. and A., on which "upwards of 70,000*l.* has already been expended by the vendor in buildings and improvements, in addition to the purchase-money paid by him for the land." It appeared that S., who was the person engaged in getting up the Company, had contracted to buy estate A. for the purpose of selling it to the Company, but had not expended any money at all upon the estate, although it was alleged, but not proved, that 70,000*l.*, or some such sum, had been laid out by the persons from whom S. purchased. He had verbally agreed to purchase estate B.; but had not signed any written contract. Before the prospectus was issued, and while the terms of it were under discussion, S. signed an agreement by which he "subscribed for 2510 shares" in the Company, and requested the directors to "allot that number to him or his nominees, in such manner as he might direct at the time of allotment." After the prospectus was issued, S., by his agents, procured applications for shares (including 200 for himself), to an amount exceeding the 2500, or half of the first issue of 5000.

On a bill, filed before any proceedings for winding-up the Company, by one of these applicants (to whom ten shares were allotted), to set aside the allotment on the ground of fraudulent misrepresentations contained in the prospectus, as to the subscription for more than half the first issue, as to 70,000*l.* having been expended by S. upon estate A., and as to there being any binding contract for the purchase of estate B., it was held that there had been such an amount of misrepresentation by the directors, and by their authorised agent S., for whose statements, having adopted and had the benefit of them, they were responsible, that any contract to take shares entered into on the faith of the prospectus, should be set aside: (*Ross* v. *Estates Investment Company*, Law Rep. 3 Eq. 122; 36 L. J. Ch. 54; 15 L. T. N. S. 272; affirmed on appeal, S. C., Law Rep. 3 Ch. App. 682.)

The decree of Wood, V.C., in whose court the cause was tried, having ordered that S. should not only pay the costs of the suit, that is to say, be jointly and severally liable for the costs of the suit, but further that he should be jointly and severally liable for the repayment of the money which was paid as a deposit for the plaintiff's shares, the Court of Appeal held that the decree should be varied with regard to S.'s liability for the repayment of the deposit, although it was right as regards his liability for costs.

In February, 1865, a Company was incorporated with a capital of 25,000*l.* in 2500 shares. The articles provided that the first directors should be determined by the subscribers to the Memorandum of Association, that the qualification of the directors so appointed should be ten shares, and of future directors, thirty shares, and that the promoter should receive 2500*l.* as promotion money. In the same month, a prospectus was issued, giving the names of seven persons of position (not the subscribers to the memorandum), one of them of considerable local influence, as directors, and stating that "the directors and their friends have subscribed a large portion of the capital, and they now offer to the public the remaining shares." The facts were that the directors had subscribed for, nominally, only ten shares each, and actually nothing, for the shares agreed to be allotted to them were fully paid-up shares, for which they paid, but were by a private arrangement with the promoter, afterwards repaid out of the 2500*l.*; the number of shares taken by "friends" of the directors, treating that word as persons who became subscribers through their influence, consisted only of 140, which were taken by one firm. The whole number of shares taken was 762, and agreed to be taken besides 430. Plaintiff applied, on the faith of the above prospectus, for fifty shares, which on the 15th of March were allotted to him, and on which he paid 25*l.* deposit, and 75*l.* allotment money. The directors admitted that the prospectus was issued by their authority. It was held that the statement in the prospectus was a clear misrepresentation, which overthrew the contract between the plaintiff and the Company, and that, as the statement related to the directors' own acts, they must be fixed with a guilty knowledge of the misrepresentation: (*Henderson* v. *Lacon*, Law Rep. 5 Eq. 249.) See, as regards this decision, *Oakes and Peek* v. *Turquand* (Law Rep. 2 H. L. 325), *infra*; and *Kent* v. *The Freehold Land and Brick-making Company* (Law Rep. 3 Ch. App. 493), *infra*.

Wood, V.C., in this case, considered that the decision in *Oakes* v. *Turquand* did not strictly apply, and that the observations of the law lords in that case, with respect to the point before him, were mere dicta.

In the case of *The New Brunswick and Canada Railway Company* v. *Muggeridge* (1 Drew. & Sm. 383), Kindersley, V.C., referring to misrepresentations in a prospectus, observed that "even assuming that these misrepresentations or want of accurate representations, were not intentionally fraudulent, those who make them cannot take advantage of want of caution and prudence on the part of those who are misled by them."

As to the rescission of a contract to take shares, see, also, *Re Reese River Silver Mining Company, Smith's case* (Law Rep. 2 Ch. App. 604; 36 L. J. 618, Ch.; 16 L. T. N. S. 549), *infra*.

A Company issued a prospectus, headed "Second issue of 10,000 shares," and stating, among other things, that the first issue of 10,000 having been fully subscribed for, the directors had resolved on a second issue, which they anticipated would be quite sufficient for the require-

ments of the association. On the faith of this prospectus B. applied for and was allotted fifty shares in the Company. Subsequently it appeared that although 10,000 had been issued, 7500 only had been subscribed for, and B. filed a bill asking to be relieved from his shares on the ground of fraud and misrepresentation in the prospectus. He was held not entitled to the relief asked: (*Green* v. *The General Provident Assurance Company*, 18 L. T. N. S. 500.)

A contract to take shares in a Company cannot be set aside because it was founded on a prospectus which contains exaggerated views of the advantages of the Company, but does not contain any material misstatement of fact. Where, therefore, a prospectus stated that a certain invention which it was the object of the Company to work had been tested, and that according to the experiments the material could be produced at a specified cost, but that it was intended to test the invention further, and the invention turned out worthless, and it appearing that there had been some testing, it was held that this was not such a misrepresentation as would enable a purchaser of shares to set aside the contract: (*Denton* v. *Macneil*, Law Rep. 2 Eq. 352.)

The directors of a Company, which was intended to own and trade with steamships, issued a prospectus stating, amongst other things, that the Company would commence operations with six screw steamships of a certain description, and referring to the Articles of Association. The plaintiff signed and addressed to the directors the printed form of application annexed to the prospectus, asking for fifty shares, which were allotted to him. The Company had no steamships at the time when the prospectus was issued, but afterwards obtained some, not of the description mentioned in the prospectus; and before the shares were allotted to the plaintiff one of the directors named in the prospectus had retired, and another was appointed in his place.

The plaintiff filed a bill on behalf of himself and all the other shareholders, except the directors who were made defendants, seeking to be relieved from his shares on the ground of misrepresentation in the prospectus. It was held that such a suit could not be maintained by the plaintiff on behalf of the other shareholders, but that his suit was not therefore to be dismissed, as he had merely made a misjoinder of plaintiffs; that the change of directors before the allotment did not render the allotment invalid; and that the statement as to the six ships was merely ambiguous, and that the plaintiff might have ascertained that it was not literally true by reference to the Articles of Association.

The prospectus named three persons as directors, who had consented to act, but never took any shares. It was held that this was not a misrepresentation, and that, under all the circumstances, the plaintiff could not be relieved from his shares: (*Hallows* v. *Fernie*, Law Rep. 3 Eq. 520; on appeal, S. C., Law Rep. 3 Ch. App. 467.)

Where a person has been, by the fraudulent misrepresentations of directors, or by their fraudulent concealment of facts, drawn into a contract to purchase shares, the directors cannot enforce the contract against him, but he may rescind it. However, he must do so within a reasonable time. A contract induced by fraud is not void but voidable, and, therefore, though the persons who by their fraud induced it cannot enforce it, other persons may, in consequence of it, acquire interests and rights which they may enforce against the party who has been so induced to enter into it: (*Re Overend, Gurney, and Co.*; *Oakes* v. *Turquand and Harding*, Law Rep. 2 H. L. 325.)

As to the effect of the winding-up of the Company on a shareholder's right to rescind his contract to take shares, see *infra*.

It appears that a transferee of shares will not be relieved from his liabilities under circumstances that would entitle a shareholder taking shares directly from the Company to be relieved on the ground of misrepresentation. See *Nichol's case*, 3 De G. & J. 387; and *Duranty's case*, 26 Beav. 268.

Rescission on the Ground of Variance between Prospectus and Memorandum or Articles.

A distinction is to be made between the cases, on the one hand, of a shareholder who has taken shares on the faith of fraudulent representations or concealment of facts, and, on the other, of a person who has taken shares on the faith of a statement of the objects of the Company, which is different from, and issued before, the statement of those objects as contained in the Memorandum of Association. In the former case there is an actual contract between the Company and the shareholder, though a contract which he can render void, by taking prompt measures for that purpose on discovering the fraud; but, in the latter case, the application for, allotment and notice of allotment of, the shares make no contract between the Company and the allottee, inasmuch as he has applied for shares in the particular Company set forth in the prospectus, but has given no consent to a contract with the Company described in the Memorandum of Association, and upon whose register he is entered. He may therefore, as a matter of right, have his name removed from the register if he applies within a reasonable time after the registration of the Memorandum of Association and before the commencement of a winding-up. If he omits, however, to apply within a reasonable time (as to which see *Peel's case*, *infra*) after the registration of the memorandum, or does acts as a shareholder after he might have become acquainted with its contents, he will be held to have bound himself to the Company by acquiescence, and to have forfeited the right (especially as against other shareholders or the creditors of the Company) of repudiating his shares: (*Downes* v. *Ship*, Law Rep. 3 H. L. 343.)

A mere difference in the language of the prospectus and the memorandum would not relieve him from his liability. The question would be whether the obligations incurred under the two documents were substantially different: (S. C.)

Before a Company had been registered, a person applied for shares on the faith of a prospectus stating the objects of the Company, and immediately after its registration shares were allotted to him. The objects of the Company, as defined by the Memorandum of Association, extended much further than the prospectus. He was held entitled to have his name removed from the register. The Company was registered on the 28th of April, 1865. In the autumn the Committee of the Stock Exchange refused to appoint a settling day, on the ground of a variance between the prospectus and memorandum in a point of minor importance. S., who had taken shares on the faith of the prospectus, attended a meeting in September, held for the purpose of correcting this variance. It was held that his attending this meeting was not a sufficient ground for fixing him with notice of the more important variances between the prospectus and memorandum, so as to affect his rights by acquiescence, he positively swearing that he did not know of those variances, and had never seen the memorandum, or had any acquaintance with its contents, till May, 1866, when he at once repudiated his shares: (*Re Russian*

(*Vyksounsky*) *Iron Works Company, Stewart's case*, Law Rep. 1 Ch. App. 574; 35 L. J. Ch. 738.)

See, also, *Re Russian* (*Vyksounsky*) *Iron Works Company, Neill's case* and *Jackson's case* (W. N. 1867, p. 120), in both of which the applications were similar to that in *Stewart's case;* but the court granted the former but refused the latter.

A. applied for shares in the same Company, on the faith of the statements contained in the prospectus in April, 1865, and in answer to his application received a letter of allotment. A. made a further payment required by the prospectus, and in June, 1865, received in exchange for the banker's receipt a certificate that he was the proprietor of fifteen shares in the Company, "subject to the provisions of the Memorandum and Articles of Association, and to the rules and regulations of the said Company." The objects of the Company, as stated in the Memorandum and Articles of Association, were more extensive than those stated in the prospectus. A. never attended any meeting of shareholders, and did not see the Memorandum or Articles of Association until May, 1866. It was held that he was entitled to have his name removed from the register, as the terms of the certificate did not amount to notice that he had entered into a new contract, or that the objects of the memorandum and articles were more extensive than those of the prospectus on the faith of which he applied for shares: (*Re Russian* (*Vyksounsky*) *Iron-works Company, Webster's case*, Law Rep. 2 Eq. 741.)

Where a prospectus stated that the vendors of certain mines, proposed to be worked by a Company, had agreed to sell them for 3750*l.* and that the Articles of Association were ready for inspection; the articles stated the true agreement, by which the vendors were to receive 5750*l.* Nearly four months after an allotment to the plaintiff, he for the first time discovered the misstatement, and demanded repayment of the money paid on his shares. A correspondence ensued, and a bill was filed seven months after the allotment. It was held that the plaintiff had a right to be relieved from his shares: (*Langham* v. *The East Wheal Rose Consolidated Silver Lead Mining Company*, 37 L. J. Ch. 253.)

Power to rescind barred by Laches or Acquiescence.

However strong the grounds may be on which a shareholder is entitled to rescind his contract to take shares, he may lose the power of doing so by *laches* or acquiescence; and this is the case whether the ground for rescinding his contract be misrepresentation and fraud, or variance between the objects stated in the prospectus and memorandum respectively.

S., on the day of registration of a Company for working mines in N., received a prospectus issued by the Company which stated that they had agreed to purchase a property in N., containing valuable mines, some of which were in full operation, and making large daily returns. S., on the faith of this, took shares, and was registered as shareholder on the 2nd of August, 1865. On the 30th of December, 1865, up to which time he had heard nothing to throw doubt on the prospectus, he received a report from the Company showing that the Company had found the property worthless, and had agreed to purchase another instead, and promising a detailed report in a short time. On the 19th of January, 1866, S. received the detailed report, showing that the property was worthless, and that the workings on it had been abandoned before the prospectus was issued. The directors, as it appeared, had issued the prospectus on the faith of the representations of the vendor of the pro-

perty, and without knowing of their untruth. On the 6th of February, 1866, S. filed a bill to be relieved from his shares. On the 28th of May, 1866, a winding-up order was made, and S., who had been refused leave to prosecute the suit, applied under the winding-up to have his name removed from the list of contributories: it was held (in accordance with the opinion of the Master of the Rolls), that S. had not been guilty of *laches*, for that the report received on the 19th of January did not show the representations in the prospectus to have been untrue at the time when it was issued, and that S. was therefore right in waiting for further information before he took proceedings to get rid of his shares: also (reversing the decision of the Master of the Rolls), that S. was entitled to have his name removed from the list of contributories: (*Re Reese River Silver Mining Company, Smith's case*, Law Rep. 2 Ch. App. 604; 36 L. J. Ch. 618; 16 L. T. N. S. 549.)

The above decision was unfavourably remarked upon by Lord Chelmsford, L.C., and Lord Colonsay, in their judgments in *Oakes* v. *Turquand, Re Overend, Gurney, & Co.* (Law Rep. 2 H. L. 352, 378). The latter, however, distinguished it from the case before him on the ground that Smith had made an application to have his name removed from the register on the ground of fraud before there had been any proceedings for winding-up the concern. See effect of winding-up, *infra*.

See, however, the remarks of Wood, V.C., on both these cases in his judgment in *Henderson* v. *Lacon* (Law Rep. 5 Eq. 263), *supra*, where he followed the decision in *Smith's case*.

L., on the faith of a prospectus, applied, on the 4th of September, 1865, for shares in a Company not yet registered. It was registered on the 11th of September, 1865, under a memorandum differing materially from the prospectus. On the 7th of October, 1865, shares were allotted to L., and on the 14th of October he paid upon them the sum payable on allotment. On the 14th of May, 1866, he was supplied with copies of the memorandum and articles, the contents of which he had not known until that time, and on the 16th he laid them before his solicitor, who advised him as to his position. On the 27th of September, 1866, he, for the first time, gave the Company notice that he repudiated his shares. The Court of Chancery Appeal held (affirming the decision of Wood, V.C.), that the delay which had taken place since the 16th of May, 1866, was sufficient to deprive L. of any right which he had on that day to repudiate his shares on the ground of the variance between the prospectus and the memorandum; and also (per Lord Cairns, L.J.), that L. had not, on the 16th of May, 1866, any right of repudiation, for that, at the expiration of a reasonable time after the registration of the Company, he must be held either to have acquainted himself with the memorandum and articles, or to have been content to waive any examination of them; and it seems that such reasonable time had expired at the time when L. made the payment of the 14th of October, 1865. K. applied for shares on the 18th of April, 1865, in a Company which was registered on the 28th of April, under a memorandum differing from the prospectus. On the 29th of April shares were allotted to him, and on the 11th of May he paid the balance of the deposit. On the 25th of April, 1866, he also made a payment on account of a call in respect of the shares; at which time he alleged that he as ignorant of the contents of the Memorandum of Association. On the 17th of July he applied under sect. 35, *infra*, to have his name removed from the register. It was held (reversing the decision of Wood, V.C.), that the delay which

had taken place had deprived K. of his right to relief: (*Re Cachar Company, Lawrence's case; Re Russian (Vyksounsky) Iron Works Company, Kincaid's case*, Law Rep. 2 Ch. App. 412; 36 L. J. Ch. 490; and *Kincaid's case*, 36 L. J. Ch. 499; 16 L. T. N. S. 222.)

A shareholder having, in August, 1865, given notice of his resolution to retire from the Company, and to have his deposit money returned immediately, on the ground of a discrepancy between the Articles of Association and the prospectus (which discrepancy was corrected in the September following), took no further step till March, 1866, but paid a call in the meantime, and then wrote demanding the return of his allotment money, on the ground of a new discrepancy, of a totally different character, which he had only just discovered. On a motion by the shareholder to have his name removed from the register, it was held that, having put himself at arms' length with the Company in August, 1865, he must be taken then to have known all the grounds of objection on which he intended to rely, and the motion was refused: (*Re Russian (Vyksounsky) Iron Works Company, Whitehouse's case*, Law Rep. 3 Eq. 790.)

It seems that an allottee of shares in a Company, who takes a transfer of other shares in the same Company, will not be relieved even from his allotted shares, on the ground of having discovered a variance between the prospectus and articles after the date of the transfer, but will be held as having had notice from that date for all purposes whatever, of the contents of the articles whether in fact he had such notice or not. See *Ib., Paige's case*, 15 W. R. 891.

A., a shareholder, on the 2nd of July, 1866, gave notice to the Company that, unless within three days steps were taken to remove his name from the register, he should apply to the court. The directors on the next day (3rd of July, 1866) replied that they should oppose his application. A. left town without taking any further steps, and on his return, about the end of August, finding that his name was still upon the register, he stated that he should apply to the court as soon as the Long Vacation was over. It was held that the delay between the 3rd of July and the beginning of the Long Vacation was fatal to A.'s application; although, having regard to a subsequent course of negotiations, between the 30th of October, 1866, and the 8th of March, 1867, from which he was led to suppose that the Company would themselves remove his name, A.'s application, though refused, should be refused without costs: (*Re Russian (Vyksounsky) Iron Works Company, Taite's case*, Law Rep. 3 Eq. 795; 36 L. J. Ch. 475; 16 L. T. N. S. 343.)

A person who would otherwise be entitled to set aside a contract on the ground of variance between the prospectus and the memorandum of a Company, cannot do so if, after discovering the variance, he has acted in a manner inconsistent with the repudiation of the contract. Where, therefore, a person was induced to take shares in a Company on the faith of representations of the objects of the Company contained in the prospectus, which he afterwards discovered to be false, and subsequently to the discovery instructed his broker to sell the shares, it was held that his name could not be removed from the register under sect 35, *infra*; and it seems, if a prospectus of a Company states that the Articles of Association may be seen at a certain place, a person taking shares on the faith of the prospectus, and without inspecting the articles, must be held to do so with notice of the contents of such articles, provided they do not contain anything incompatible with the prospectus: (*Re Hop and Malt Exchange and Warehouse Company,*

Ex parte Briggs, Law Rep. 1 Eq. 483; 35 Beav. 273; and 14 L. T. N. S. 39.)

Where there is a material variance between the prospectus of a Company issued before the registration of the Company, and the Memorandum of Association, a person who has applied for shares on the faith of the prospectus, will have a reasonable time allowed within which to examine the memorandum, and repudiate the shares; but it was held (affirming the decision of the Master of the Rolls) that where a shareholder had not examined the memorandum for more than eighteen months, and had taken no steps to repudiate the shares for some time after that, his name should not be taken off the list of contributories on the winding-up of the Company: (*Re Madrid Bank, Wilkinson's case*, Law Rep. 2 Ch. App. 536; 36 L. J. Ch. 489.)

Nothing was said in the judgment in this case as to the effect of a winding-up on a shareholder's right of rescinding his contract. The case was decided before the decision of *Oakes* v. *Turquand* (Law Rep. 2 H. L. 325), *infra;* and it remains to be seen whether the principles laid down in that case with regard to the rescission of a sharetaking contract on the ground of fraud will be applied in cases of variance between the prospectus and the memorandum of a Company: (see *infra.*)

To raise a case of acquiescence express or implied notice must be established against the person alleged to have acquiesced. Notice, however, of articles is presumed after the lapse of a reasonable time after their registration.

In a case decided about the same time as the last, it was held that a person who applies for shares in a Company formed under this act ought, if a Memorandum and Articles of Association are in existence, to look at them before he applies for shares; and, if those documents are not in existence at the time of his application, he ought at the very latest, when he receives his allotment of shares, to satisfy himself that there is nothing in the memorandum or articles to which he desires to object. If he does not do this he will be held bound by the contents of the memorandum and articles, even although he were in fact ignorant of those contents. Therefore, where the prospectus of a Company stated that copies of the Memorandum and Articles of Association could be seen at the office of the solicitors of the Company, P., who applied for shares on the 27th of June, 1865 (the day on which the Company was registered), received an allotment on the 18th of July, 1865, received a dividend on his shares in February, 1866, and took out a summons to have his name removed from the register of shareholders of the Company in January, 1867, upon the ground of a material variation between the Memorandum of Association and the prospectus, on the faith of which he applied for his shares, was held to be too late in his application, although he swore that he was, until December, 1866 (more than six months after an order had been made to wind-up the Company), ignorant of the variation of which he complained: (*Re Barned's Banking Company, Ex parte Peel*, Law Rep. 2 Ch. App. 674; 16 L. T. N. S. 780, Ch.)

Effect of Winding-up Order on Power of Rescission.

Whatever right a shareholder may have to rescind his contract to take shares on the ground of fraudulent representation or concealment of facts, that right is lost (at all events as against creditors) once a winding-up of the Company has commenced.

It was held, in the case of *Oakes and Peek* v. *Turquand, Re Overend,*

Gurney, and Co. (Law Rep. 2 H. L. 325; 16 L. T. N. S. 808), that a shareholder who had taken shares in a Company on the faith of a prospectus in which there were both *suggestio falsi* and *suppressio veri*, could not on the ground of fraud as against the creditors of the Company free himself from his liability to contribute in the winding-up, although (to use the words of Chelmsford, L.C.) "It is quite clear that Oakes might originally have disaffirmed that contract and divested himself of his shares, and that he never did any act to affirm it, nor was aware of the true state of the firm of Overend, Gurney, and Company at the time of the formation of the new Company, nor until after the failure. No dividend was paid to the shareholders, and no general meeting was called, the Articles of Association prescribing that the first general meeting should be held not more than twelve nor less than ten months from the day of incorporation, and the Company having come to an end before the twelve or even the ten months had expired."

See *Re Warren's Blacking Company, Pentelow's case*, Law Rep. 4 Ch. App. 178, *supra*.

A shareholder who institutes proceedings against a Company to repudiate his shares, and is prosecuting them when a winding-up order is made, is entitled to be struck off the register if he make out his case of misrepresentation. But where a shareholder instituted no proceedings of his own against the Company, but pleaded misrepresentation to an action for calls, and obtained a verdict (a rule was subsequently made absolute to set the verdict aside), and shortly after the verdict a winding-up order was made, it was held that this did not amount to such action on his part as brought his case within the above rule: (*Re Cleveland Iron Company, Ex parte Stevenson*, 16 W. R. 95.)

But a shareholder will not be relieved from shares in a Company upon the ground of misrepresentation in the prospectus on a bill filed after the presentation of a petition for winding-up on which an order was subsequently made: (*Kent* v. *Freehold Land and Brickmaking Company*, Law Rep. 3 Ch. App. 493.)

In his judgment on this case, Cairns, L.C., observed: "As for the argument that the plaintiff had shown a clear intention to repudiate (*i. e.*, by his solicitor writing to the Company) as early as the 24th of July, 1866 (*i. e.*, before presentation of the petition to wind-up), the fact that he had then written intimating his repudiation of the shares when coupled with the fact of his delay to file his bill for two months from that time put his case really in a worse position than it would have been in otherwise."

As to the effect of a winding-up with regard to a person seeking to repudiate his shares on the ground of variance between a prospectus issued before registration and the memorandum, see the judgment of Chelmsford, L.C., in *Oakes and Peek* v. *Turquand*, Law Rep. 2 H. L. 351.

The prospectus of a proposed Company described as a "finance bank," stated eight objects, some of which went beyond ordinary banking business. In May, S., on the footing of this prospectus, applied for fifty shares, and paid the deposit. On the 1st of June the Company was registered with a Memorandum of Association defining its objects, which went considerably further beyond the ordinary businesss of banking than the objects mentioned in the prospectus, and on the same day the directors sent S. a letter of allotment of fifty shares. In December of the same year the Company failed, and a petition to wind-up was filed. S. applied to have his name taken off the register on the ground that he

never had agreed to become a shareholder in a Company with these extended objects. There being no evidence to rebut S.'s positive oath, that until the Company had failed he never had any notice of the extension of the objects of the Company beyond those named in the prospectus. The Court of Chancery Appeal held (affirming the decision of Wood, V.C.) that his name ought to be removed from the register: (*Re the Scottish and Universal Finance Bank, Ship's case*, 2 De G. J. & S. 544, on appeal.)

The decision in this case, as well as those in *Webster's case* and *Stewart's case*, *supra*, were disapproved of in *Oakes and Peek* v. *Turquand* (Law Rep. 2 H. L. 351). Chelmsford, L.C., in his judgment, remarked, "I confess that these decisions are not at all satisfactory to my mind. I think that persons who have taken shares in a Company are bound to make themselves acquainted with the Memorandum of Association, which is the basis upon which the Company is established. If they fail to do so, and the objects of the Company are extended beyond those in the prospectus (a fact which may be easily ascertained) the persons who have so taken shares on the faith of the prospectus ought, in my opinion, to be held bound by acquiescence. In *Ship's case* the judges partly proceeded on the oath of the party that he never had notice of the extension of the objects of the Company. However true this may be, it depends entirely upon the party's own assertion; and the answer to it is, 'You might have made yourself acquainted with the proceedings of the Company, and ought to have done so.'"

Subsequently, *Ship's case* came before the House of Lords on the appeal of a contributory of the Company, named Downes, who had been permitted to intervene and appeal from the order of the Vice-Chancellor, and afterwards from the decision of the Lords Justices, by which Ship's name was removed from the register of shareholders of the Company. It appeared that Downes was one of the parties to the prospectus, on the faith of which Ship took his shares, and was also a party to the memorandum by which the business of the Company was extended greatly beyond the terms of the prospectus. It was held that Downes' application to rescind the order for the removal of Ship's name had been rightly refused by the court below, and that whatever might be Ship's liability as between himself and the official liquidator or another innocent shareholder, or a creditor of the Company (as to which no opinion was expressed), Downes was precluded from insisting upon retaining him in the Company either on the ground of *laches* or acquiescence. The appeal accordingly was dismissed with costs: (*Downes* v. *Ship*, Law Rep. 3 H. L. 343.)

24. *Transfer by personal representative.*—Any transfer of the share or other interest of a deceased member of a Company,(*a*) under this act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

(*a*) *A deceased member of a Company.*]—See clause 12 of Table A. as to the transmission of the shares of a deceased member.

25. *Register of members.*—Every Company under this act shall cause to be kept in one or more books a register of its

members,(*a*) and there shall be entered therein the following particulars:

(1.) The names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number:(*b*) And of the amount paid or agreed to be considered as paid(*c*) on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member: (*d*)

And any Company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who shall knowingly and wilfully authorise or permit such contravention shall incur the like penalty.

(*a*) *A register of its members.*]—This and the following sections of the act up to sect. 37 contain provisions respecting the register of members, and by sect. 37 it is made *primâ facie* evidence of any matters directed or authorised by the act to be inserted in it. See sect. 35 as to cases where the court will rectify the register.

As to the duty imposed on a Company by this section to keep a correct register, and their liability to make good losses consequent on a breach of this duty, see *Re Bahia and San Francisco Railway Company and Amelia Trittin and others* (Law Rep. 3 Q. B. 584).

Where a Company is required to register a transfer of shares on which it has a lien, that lien must be discharged before the Company will be obliged to register the transfer. See *Re London, Birmingham, and South Staffordshire Bank* (34 Beav. 332; 5 N. R. 351), p. 28, *ante*.

A shareholder is not indebted to a Company on account of a call until due notice of such call, and of the time and place for payment of it shall have been given, in accordance with the provisions of the Articles of Association.

A shareholder may, therefore, claim to have a transfer of his shares registered after a call made, and before notice of it so given to him: (*Rudolph* v. *The Inns of Court Hotel Company* (8 L. T. N. S. 551, Q. B.; 32 L. J. Q. B. 369.)

(*b*) *Distinguishing each share by its number.*—Sect. 8 of 8 Vict. c. 16, enacts that a person shall be deemed a shareholder "who shall have subscribed, &c., and whose name shall have been entered on the register of shareholders hereinafter mentioned:" (words similar to those used in sect. 23, *supra*.) Sect. 9 prescribes the mode of making and keeping the register and (among other things) that it shall "distinguish each share by its number." It was held, in an action for calls, that sect. 8 was complied with, although the register did not show the distinguish-

ing numbers of the defendant's shares, it being proved otherwise that the shares were in fact numbered: and an opinion was expressed that the provisions in sect. 9 (corresponding to the above section of this act) as to the mode of keeping the register are directory only, except with reference to the use of the register as *primâ facie* evidence of liability: (*East Gloucestershire Railway Company* v. *Bartholomew and others*, Law Rep. 3 Ex. 15.)

(*c*) *The amount paid or agreed to be considered as paid, &c.*]—Where the directors of a bank, then in an insolvent condition, proposed to their shareholders that the holders of 10*l.* shares, on which 7*l.* had been paid should advance 3*l.* on this alternative, viz., if the bank should be able to go on, the advance was to be treated as a loan at 10*l.* per cent. interest, while, if the bank were wound-up, the advance was to be taken as paid upon shares in anticipation of calls.

It would seem that such an arrangement was invalid under this section, as the money advanced had not been entered on the register as "an amount paid or agreed to be considered as paid on the shares:" (*Re Oriental Commercial Bank, Barge's case*, Law Rep. 5 Eq. 420.)

On the subject of fully paid-up shares, see now sects. 24 and 25 of "The Companies Act, 1867," *post*.

(*d*) *The date at which any person ceased to be a member.*]—After the name of a person has been wrongfully placed upon the register of a Company it is not in the power of the directors, by simply removing his name from the register, effectually to indemnify him against liability arising from such wrongful insertion of his name; if they desire to do so they must apply to the court for the purpose; and if they neglect so to do, the shareholder may himself apply, notwithstanding that his name has been in fact removed: (*Re the Bank of Hindustan, China, and Japan, Martin's case*, 2 H. & M. 669; 11 Jur. N. S. 635, Ch.; 12 L. T. N. S. 671.)

26. *Annual list of members.*—Every Company under this act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the Company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:

(1.) The amount of the capital of the Company, and the number of shares into which it is divided:

(2.) The number of shares taken from the commencement of the Company up to the date of the summary:

(3.) The amount of calls made on each share:

(4.) The total amount of calls received:

(5.) The total amount of calls unpaid:

(6.) The total amount of shares forfeited:

(7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary (*a*) shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Joint-Stock Companies.

(*a*) *The above list and summary.*—For a form of this list and summary, see Form E. in the second schedule to this act.

Where a Company makes a return under this section to the registrar, he compares it with the previous returns of the same Company, and if they do not agree, he sends it back for correction. See Report of the 28th of May, 1867, qu. 32 and 33.

27. *Penalty on Company, &c., not keeping a proper register.*—If any Company under this act, and having a capital divided into shares, makes default in complying with the provisions of this act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such Company shall incur a penalty (*a*) not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

(*a*) *Shall incur a penalty.*]—The manner of recovering penalties is prescribed by sects. 65 and 66, *infra*.

28. *Company to give notice of consolidation or of conversion of capital into stock.*—Every Company under this act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, (*a*) or converted any portion of its capital into stock, shall give notice to the Registrar of Joint-Stock Companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

(*a*) *Of larger amount than its existing shares.*]—By sects. 21 and 22 of "The Companies Act, 1867," a Company may now divide its shares into shares of smaller amount.

29. *Effect of conversion of shares into stock.*—Where any Company under this act, and having a capital divided into shares, has converted any portion of its capital into stock, (*a*) and given notice of such conversion to the registrar, all the provisions of this act which are applicable to shares only

shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

(*a*) *Capital into stock.*]—As to the conversion of shares into stock, see clauses 23—25 of the regulations contained in Table A., *post.*

30. *Entry of trusts on register.*—No notice of any trust,(*a*) expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of Companies under this act and registered in England or Ireland.

(*a*) *No notice of any trust, &c.*—Where a person's name is placed upon the register by his own consent, he is liable as a member both to the Company and its creditors, notwithstanding that he is only a trustee for another. See *Re International Contract Company, Levita's case*, Law Rep. 3 Ch. App. 36.

A shareholder in a Company made an assignment of certain paid-up shares by way of mortgage. The assignee gave no notice to the Company. The assignor had also unpaid shares in the same Company, and in the course of discussions at the board of directors respecting the unpaid shares, the assignor verbally informed the directors of the assignment of his paid-up shares; but no entry was made on the minutes of this notice. The assignor afterwards became bankrupt. It was held that, inasmuch as the directors received the information in the course of the transaction of the business of the Company, the notice was sufficient to make the assignment complete in equity; and that the shares did not remain in the order and disposition of the bankrupt: (*Ex parte Agra Bank, Re Worcester*, Law Rep. 3 Ch. App. 555.)

As to the circumstances under which shares will be held to be in the order and disposition of a bankrupt within the terms of "The Bankruptcy Act, 1849," see p. 53, *ante.*

A., desiring to take shares secretly in a banking Company (established under the repealed act), purchased shares in the names of B. and C., into whose names the shares were transferred. It was admitted that A. paid for the shares, and was to receive any profits from them; but at the time of the purchase the Company were not informed of this. The deed of settlement provided that the Company should not notice any trusts, and that no sale of shares should take place without the consent of two directors. On the Company being wound-up, B. and C.'s names had been settled on the list as contributories. Upon an application by five contributories, to have A.'s name put on the list, it was held that it being a *bonâ fide* case of trustee and *cestui que trust*, and not one of principal and agent, A.'s name could not be placed on the list: (*East of England Banking Company, Ex parte Bagg*, 2 D. & S. 452; 11 Jur. N. S. 201; 35 L. J. Ch. 43.)

Where shares in a Company were transferred into the name of A. with his consent, to be held by him as a trustee for the Company, it was held by Wood, V.C., that although a person wrongfully put upon the register would have a right to relief, even as against creditors, A.'s

name having been placed by his own consent upon the register, he was liable as a contributory, although he might have a right to be indemnified by the Company for any payments made by him in respect of shares of which he was merely a trustee. The Vice-Chancellor, in the course of his judgment, threw out that "in the case of a trustee for the Company they might (if the Articles of Association allow it) provide that the trustee for the Company should take the number of shares required to be taken for them, but that they must be entered as wholly paid-up shares": (*Re Imperial Mercantile Credit Association, Chapman and Barker's case*, Law Rep. 3 Eq. 361.)

Where the plaintiff in an action obtained a charging order under 1 & 2 Vict. c. 110, s. 14, on shares standing in the name of the defendant in a Company, limited, the court refused an application to rescind the order made by the defendant on the ground that the shares were held by him in trust for a third person: (*Cragg* v. *Taylor*, Law Rep. 1 Ex. 148; 35 L. J. Ex. 92; 13 L. T. N. S. 756.)

31. *Certificate of shares or stock.*—A certificate, under the common seal of the Company,(*a*) specifying any share or shares or stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member (*b*) to the share or shares or stock therein specified.

(*a*) *A certificate under the common seal of the Company.*]—The following form of certificate may be adopted:

Certificate of Shares.

The Company, Limited.
Registered under "The Companies Act, 1862."

[Date of registration.]

Nos. to . [Five] shares of £ each.

This is to certify that is the registered holder of the shares Nos. to in the above Company, subject to the Articles of Association, on each of which there has been paid to this day £ .

Given under the common seal of the Company the day of 18 .

(Seal.) (Signed) } Directors.
, Secretary.

As to the right to require this, where Table A. applies to the Company, see Table A., clauses 2 and 3, *post.*

See, also, *Wilkinson* v. *Anglo-Californian Gold Company*, 18 Q. B. 728.

(*b*) *Evidence of the title of the member, &c.*]—On this subject see *Hare* v. *Waring* (3 M. & W. 362), *Shaw* v. *Fisher* (2 De G. & Sm. 11), and *Curling* v. *Flight* (6 Ha. 41).

T., being the registered holder of five shares, left the share certificates in the hands of her broker. A transfer of the shares to S. and G., purporting to be executed by T., together with the certificates, was left with the secretary for registration. The secretary in the usual course wrote to T., notifying that the transfer had been so left, and receiving no answer after ten days, registered the transfer, and removed the name of T., and placed the names of S. and G. on the register as holders of the five shares, giving them certificates certifying that they were the registered holders of the five specific shares. A. bargained for five shares, through brokers in the usual way on the Stock Exchange, and

paid the value of five shares, and the specific five shares were transferred to him by S. and G., and the name of A. was registered as the holder of the shares, and share certificates were given to him. It was afterwards discovered that the transfer to S. and G. was a forgery, and the Company was ordered to restore T.'s name to the register by rule of court under sect. 35, *infra*.

On a case stated under that section, it was held that the giving of the certificate by the Company to S. and G. amounted to a statement by the Company, intended by the Company to be acted upon by purchasers of shares in the market, and that A., having acted upon that statement, the Company were estopped from denying its truth. That A. was therefore entitled to recover from the Company as damages for the loss of the shares, the value of the shares at the time the Company first refused to recognise him as a shareholder, with interest at 4 per cent. from that time: (*Re Bahia and San Francisco Railway Company and Amelia Trittin and others*, Law Rep. 3 Q. B. 584.)

32. *Inspection of register.*—The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned:(*a*) Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the Company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: if such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the Company who shall knowingly authorise or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects Companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the Stannaries, in the case of Companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

(*a*) *Hereinafter mentioned.*]—See sect. 39 of this act as to the registered office.

33. *Power to close register.*—Any Company under this act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered

office of the Company is situated, close the register of members(*a*) for any time or times not exceeding in the whole thirty days in each year.

(*a*) *Close the register of members.*]—Clause 11 of Table A. (first schedule, *infra*) provides for the closing of the transfer books during the fourteen days preceding the ordinary general meeting in each year.

34. *Notice of increase of capital and of members to be given to registrar.*—Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital(*a*) beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: If such notice is not given within the period aforesaid the Company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

(*a*) *Increase in such capital, &c.*]—Where a Company reduces its capital, the fact of such reduction must also be registered. As to the course to be pursued in such a case, see "The Companies Act, 1867," s. 15, *post.*

35. *Remedy for improper entry or omission of entry in register.*—If the name of any person is, without sufficient cause, entered in(*a*) or omitted from(*b*) the register of members of any Company under this act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member(*c*) of the Company, the person or member aggrieved, or any member of the Company, or the Company itself,(*d*) may, as respects Companies registered in England or Ireland, by motion in any of Her Majesty's Superior Courts of law or equity, or by application to a judge sitting in chambers, or to the vice-warden of the Stannaries in the case of Companies subject to his jurisdiction,(*e*) and as respects Companies registered in Scotland by summary petition to

the Court of Session, or in such other manner as the said courts may direct, apply for an order of the court(*f*) that the register may be rectified, and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register,(*g*) and may direct the Company to pay all the costs of such motion, application, or petition, and any damages the party(*h*) aggrieved may have sustained: The court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register;(*i*) provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie.

Section 35.]—Cairns, L.J., expressed his opinion in *Ward* and *Henry's case*, *infra*, that the scope and object of this section is to provide for the correction of errors in the register occasioned by the default of the Company, and dissented from the view that under it the court is to try a suit between the vendor and purchaser of shares, and to ascertain who in equity is really the owner of any particular share.

The power given by this section may be exercised not only before a winding-up of a Company, but also (under sect. 98, *infra*) for the purpose of settling a list of contributories upon a winding-up.

Where an application for a special examiner was made by a shareholder who had given notice of a motion under this section, the court observed that there was ample jurisdiction under this section to deal with all matters of practice incidental to an application to rectify the register, but refused the application on the ground that sufficient evidence had not been adduced to support it: (*Re Cashar Company*, W. N. 1866, p. 364.)

(*a*) *If the name of any person is, without sufficient cause, entered in, &c.*]—The name of a person is, without sufficient cause, entered in the register of members:

1. If he has not agreed to become a member of the Company; as to what constitutes an agreement to become a member, see sect. 23, *supra*.
2. Where he has been induced to enter into the contract of membership by fraud or material misrepresentation, and has rescinded the contract within a reasonable time after notice of the fraud or misrepresentation, or has taken legal proceedings for that purpose before the presentation of a petition to wind-up the Company.

For cases under this head, see sect. 23, *supra*, and the note under it with regard to rescission on the ground of fraud.

3. When he has taken shares on the faith of a prospectus which sets forth the objects of the Company as being different from those stated in the Memorandum of Association.

For cases under this head see sect. 23, *supra*, and the note under it with regard to rescission on the ground of variance.

It has also been held that this section confers a jurisdiction upon the court to rectify the register of shareholders by erasing a name improperly placed thereon, although the shares have been forfeited and the name removed from the register previously to the application to the court: (*Re the Bank of Hindustan, China, and Japan, Ex parte Los*, 11 Jur. N. S. 661, Ch.; 12 L. T. N. S. 690.)

Where a Company has amalgamated with another Company, under sect. 161, *infra*, and has caused the name of a non-assenting shareholder to be entered on the register of the latter Company, the shareholder may apply under this section to have his name struck off: (*Re Bank of Hindustan, &c., Higgs's case*, 2 H. & M. 657.)

After the name of a person has been wrongfully placed upon the register of a Company it is not in the power of the directors, by simply removing his name from the register, effectually to indemnify him against liability arising from such wrongful insertion of his name; if they desire to do so, they must apply to the court for the purpose, and if they neglect so to do, the shareholder may himself apply, notwithstanding that his name has been in fact removed: (*Re the Bank of Hindustan, China, and Japan, Martin's case*, 2 H. & M. 669; 11 Jur. N. S. 635, Ch.; 12 L. T. N. S. 671.)

But where shares have been forfeited by a valid resolution of directors the fact that the name of the owner has not been removed from the register of members is not sufficient to make him a contributory on the winding-up of the Company: (*Re Tavistock Ironworks Company, Lyster's case*, Law Rep. 4 Eq. 233.)

A scheme was proposed for the transfer of the business of Company A. to Company B.; after which Company A. was ordered to be wound-up compulsorily, but was eventually wound-up voluntarily under the supervision of the court. Certain shareholders in Company A. applied for and were allotted shares in Company B. in lieu of their shares in Company A., and on the understanding that the transfer would be completed. The court, however, held that the transfer could not be effected. The shareholders then applied to the court for an order to rectify the register of members in Company B. by striking out their names therefrom. It was held that their names must be struck out, and that Company B. must pay them their costs: (*Re the London and Exchange Bank*, 16 L. T. N. S. 340, Ch.)

Where a person's name appears to have been placed on the list of shareholders in a Company, by the act of an agent of his, and the agency is disputed, there must be more evidence before the court, in an application under this section, than the mere affidavits of the parties to the dispute. If the person whose name appears on the list denies that he ever gave the authority, the fact that the agent swears that he did give it cannot entitle the court to act upon that evidence alone. The court cannot upon such testimony say that the person is a shareholder, or speak definitively as to whatever else may be the consequence of the acts he may have done: (*Re the South Kensington Hotel Company, Braginton's case*, 12 L. T. N. S. 67, Ch.)

Where a shareholder had been erroneously entered on the register of a Company as "Henry Calverly," instead of "Henry Calverly Torrens," and applied under his correct name to have the register rectified, his application was refused with costs, on the ground that no such name as his appeared on the register: (*Re Russian* (*Vyksounsky*) *Iron Works Company, Torrens's case*, W. N. 1866, p. 346.) See, also, *Re Southampton, Isle of Wight, and Portsmouth, &c., Company, Webb's case*, 9 Jur. N. S. 856.

The court has power under this section, where shares stand on the register in a name that ought to be removed from it, to transfer these shares to the name of a person already on the register to whom they rightfully belong: (*Re Masons' Hall Tavern Company, Nokes's case*, 37 L. J. Ch. 470; 16 W. R. 413.)

(*b*) *Omitted from, &c.*]—As to the right of a shareholder to have his name restored to the register when it has been wrongfully removed from it by the Company in consequence of his name having been forged to deeds of transfer, see *Re Bahia and San Francisco Railway Company and Amelia Trittin and others* (Law Rep. 3 Q. B. 584), p. 105, *ante*; and *Swan* v. *The North British Australasian Company* (2 H. & C. 175, in error; 32 L. J. Ex. 273), p. 95, *ante*.

(*c*) *The fact of any person having ceased to be a member.*]—By sect. 22, *supra*, the shares or other interest of any member of a Company are capable of being transferred in manner provided by the regulations of the Company, and the effect of the decisions would appear to be that there is no default or unnecessary delay in entering on the register the fact of any person having ceased to be a member of the Company unless the transfer is first fully completed in manner provided by the regulations of the Company.

On the subject of transfers generally, see sect. 22, *supra*, and the notes under it.

W., a registered holder of shares, sold them to S., and executed a transfer to him, which S. did not register. S. afterwards agreed to make over these shares to H., and then refused to execute a transfer. H. thereupon persuaded W. to execute a fresh transfer direct to him, which H. took in for registration; but the directors, in consequence of a notice from S., refused to register it. H. then filed a bill for specific performance against S. S. put in an answer, stating the transfer from W. to H., and his own willingness to concur in vesting the shares in H. in any way not involving his becoming a shareholder himself. Four days after this a petition for winding-up was presented, upon which an order was made, W. being still the registered holder. The Master of the Rolls decided that the register ought to be rectified, and H. placed on the list of contributories instead of W. It was held by Turner, L. J., that the intention of this section is to provide a summary means of dealing with cases which the court in its discretion should think might be so dealt with, and that the jurisdiction given by it to rectify the register is general, and not confined to cases where there has been error, mistake, or default on the part of the Company, but that the court has a discretion whether it will exercise the jurisdiction, and that, in circumstances such as those of the present case, it ought not to be exercised. Lord Cairns, L.J. (dissenting from this view), held that the jurisdiction given by the section is confined to cases where the register is incorrect through default on the part of the Company, and that, as in the present case there had been no such default, the court had no authority to rectify

the register: (*Re London, Hamburgh, and Continental Exchange Bank, Ward and Henry's case*, Law Rep. 2 Ch. App. 431; 36 L. J. Ch. 462; 16 L. T. N. S. 254.)

It has been held by Malins, V.C., that where the Articles of Association of a Company require transfers of shares to be executed by both parties, the court has no power, under this section and sect. 98 of this act, to rectify the register by removing the name of a transferor, unless the transfer has been executed by the transferee: (*Re Overend, Gurney, and Co., Musgrave and Hart's case*, Law Rep. 5 Eq. 193.)

Even in the absence of any provision in a Company's articles, with reference to the form of transfer, a transfer must be executed in the manner usually adopted by the Company before they can be obliged to register it, as appears from the following case: I., a resident in Smyrna, who employed a Company as his agents, directed them to buy shares in the Company for him. On the 2nd of May they bought shares from M., who executed a transfer to I. on the 4th, and left it at the Company's office on the 7th. The next meeting of the directors was on the 10th; the Company stopped payment on the 11th, and a winding-up petition was presented on the 12th, on which an order was made. I. had signified to the Company his approval of the purchase, but, being in Smyrna, had not executed the transfer, and it had not been registered. An order having been made for rectifying the register by removing the name of M., it was proved, on appeal, that although the Articles of Association did not prescribe any particular form of transfer, it had been the uniform practice of the Company to have shares transferred by deed executed both by transferor and transferee. The Court of Chancery Appeal held that the directors were justified in not registering a transfer where the transfer deed had not been executed by the transferee; that there had, therefore, been no default or unnecessary delay by the Company within the meaning of this section, and that the name of M. could not be removed from the register: (*Re Imperial Mercantile Credit Association, Marino's case*, Law Rep. 2 Ch. App. 596; 36 L. J. Ch. 468; 16 L. T. N. S. 368.)

In adjudicating on an application under this section, a court of equity is not bound to follow what a court of law would do in such a case, but will take into consideration any principle of equity applicable to the subject.

The articles of a Company provided that, on proof of title and execution of transfer, the Company should register the transfer, but that no transfer of shares should be made or registered after a call on such shares had been made until payment thereof. At a meeting of the board of directors the propriety of making a call was discussed. A shareholder present induced the directors to postpone consideration of the matter, and then, without informing them of his intention, transferred his shares to a pauper in order to escape all further liability. The directors having declined to register the transfer. It was held by Rolt, L.J., that the court would not, under this section, rectify the register by removing the name of the transferor and substituting that of the transferee.

The court expressed an opinion that, in a case of doubt, the court might, instead of adjudicating between a Company and a person claiming to be registered as a shareholder under this section, direct a suit to be instituted for the purpose of determining the rights of the parties: (*Re National and Provincial Marine Insurance Company, Ex parte Parker*, Law Rep. 2 Ch. App. 685.)

A shareholder executed a transfer of his shares, which he took,

together with his certificate of shares, to the Company's office for registration. He left the transfer, but refused to leave the certificate for the inspection of the directors. It was held that the court would not, on motion under this section, compel the Company to register the transfer, and the court refused a motion for that object with costs: (*Re the East Wheal Martha Mining Company*, 33 Beav. 119.)

It was the practice of a Company that before registering the name of any transferee as shareholder a director should examine a book in which the transfers were entered, and if he approved of the transfer should initial the entry, and seal the new share certificate. This inspection was usually made once a week, and the transferees approved of were registered at the next board meeting. Owing to non-attendance on previous occasions, the inspecting director was unable to examine the whole of the entries on the last occasion on which he attended, and consequently certain transfers, which might have been registered but for this omission, remained unregistered until a winding-up commenced. The court held that the Company were guilty of unnecessary delay, and that a transferor (Smallbone) whose name might have been removed from the register but for such delay was entitled to have his name removed from the list of contributories.

In a second case a clerk of the Company did not enter a transfer (to Parish) which had been lodged in such book because a call had been made (though not due) and not paid on the shares transferred. It was held that there was not unnecessary delay: (*Re Joint-Stock Discount Company, Ex parte Read*, 36 L. J. Ch. 472.)

S. executed a transfer of shares to H. in December, 1865. The transfer, according to the Articles of Association, required the sanction of the directors, who might refuse it in certain cases. The transfer was not left at the office for approval until the 3rd of March, 1866. In the ordinary course of business the directors met once a week. Their last meeting had been on the 1st of March, and their next was to be on the 8th. On the 7th of March a petition to wind-up the Company was presented, and, on the 17th, a winding-up order was made. The transfer had never been registered. It was held that there had been no default or unnecessary delay on the part of the Company in placing H. on the register of shareholders; and an application by S., to which H. consented, to have the register rectified and the name of H. substituted for that of S. on the list of contributories was refused, affirming the order of the Master of the Rolls: (*Re Joint-Stock Discount Company, Shepherd's case*, Law Rep. 2 Ch. App. 16, affirming S. C. 2 Eq. 564.)

This case was followed by Wood, V.C., in *Marzetti's case*, *Re English Joint-Stock Bank* (W. N. 1866, p. 399); there the Company's articles provided that the Company might decline to register any transfer unless the transferee was approved by the board. A shareholder made a contract to sell his shares, which was to be completed by a certain day; before that day a winding-up commenced, and an application was made under this section to have the purchaser's name placed on the register. The application was refused with costs on the ground that there had been no acceptance of the transferee by the board and no opportunity of doing or refusing to do so.

A transfer of shares in a Company was executed by both parties, left at the office for registration, and approved by the director whose duty it was to inspect transfers, on the 28th of February, 1866, and would, according to the ordinary practice of the Company, have been confirmed at the next meeting of the directors, which was held on the 1st of March,

and registered; the directors did not confirm it at that meeting, and, on the 3rd of March, the Company being insolvent, they resolved that no transfers then in the office should be registered without their express sanction; the transfer was not registered, and the Company was soon afterwards ordered to be wound-up. The Master of the Rolls held that as the transfer was not registered on the 1st of March, there was unnecessary delay in registering it within the meaning of this section; that the resolution of the 3rd of March could not effect a transfer which ought to have been previously registered; and that the transferor was entitled to be in the same position as if the transfer had been registered on the 1st of March, and could not be placed on the list of contributories. *Shepherd's case* (Law Rep. 2 Ch. App. 16) was distinguished on the ground that inasmuch as, in it, the transfer had only been deposited on the 3rd of March, the very day on which the resolution was passed, so that the directors were not bound to register it, and could not have registered it before that day, they were justified in suspending its registration from that period: (*Re Joint-Stock Discount Company, Nation's case*, Law Rep. 3 Eq. 77.)

See *Re Colonial and General Gas Company, Riddell's case* (W. N. 1867, p. 118), decided on the same ground as the last case, in which, however, the applicant had to pay his own costs, as he had not been sufficiently active. See, also, *Re Joint-Stock Discount Company, Hill's case*, Ib., p. 137.

Although there may have been unnecessary delay on the part of a Company in registering a transfer of shares, no order for the rectification of the register can be made under this section, after the Company has been ordered to be wound-up, on the application of a transferor who is also in default: (*Re Anglo-Danubian Steam Navigation and Colliery Company, Walker's case*, Law Rep. 6 Eq. 30.)

This case was distinguished by the Master of the Rolls, who decided it, from *Fox's case* (Law Rep. 5 Eq. 118), *post*, on the ground that Fox ought never to have been registered as a shareholder at all, whilst Walker, having properly been on the register, and, having transferred his shares, was bound to have seen that the name of his transferee was substituted for his own on the register, and, having allowed a considerable time to pass without doing so, was not entitled to alter the position of the share register after a winding-up order.

The registered owner of certain shares in a Company executed a transfer of them to a purchaser two years before the date of a winding-up order, but took no steps to procure the transfer to be registered. A winding-up order having been made, it was held that his name could not be removed from the register under this section, or from the list of contributories: (*Re Contract Corporation, Head's case and White's case*, Law Rep. 3 Eq. 84.)

If the Articles of Association of a Company provide that the directors may decline to register a transfer in any case where the directors consider the transferee to be an irresponsible person, a transferor cannot claim to have his name removed from the register under this section on the ground of unnecessary delay, unless the transferee be a responsible person. S. sold certain shares, and executed a transfer of them to F. The transfer was deposited for registration with the Company, but was not registered. Six weeks afterwards the Company was ordered to be wound-up. F. proved to be an irresponsible person. It was held that S. must be placed on the list of contributories, although it would have been otherwise if F. had been responsible: (*Re Joint-Stock Discount Company, Shipman's case*, Law Rep. 5 Eq. 219.)

Upon the purchase of shares in a banking Company, the transfer was executed by both transferor and transferee, and left at the office of the Company by the transferee for registration, the day before the Company stopped payment. A voluntary winding-up was ordered to be continued under the supervision of the court, and the official liquidators registered all the transfers lying at the office. The court held that it had power, under this section, to rectify the register, and ordered that the name of the transferee should stand on the register and the list of contributories in place of that of the transferor: (*Re Overend, Gurney, and Co., Ward and Garfit's case*, Law Rep. 4 Eq. 189; 36 L. J. Ch. 416.)

(*d*) *Or the Company itself, &c.*]—"This provision might, I apprehend, be acted on by the Company, if it claimed adversely to omit or insert a name, and desired to have this claim adjudicated upon by the court in presence of the party interested; or, if it desired to establish in presence of the party interested its right to omit from the register the name of a person which, *per dolum aut incuriam*, had been entered there": (*Ward and Henry's case*, Law Rep. 2 Ch. App. 442, *supra*. Lord Cairns, L.J.)

Where the register is in a wrong form merely in consequence of the default of the Company itself, it appears the Company cannot claim to have it rectified under this section. See the judgment of Lord Cairns, L. J., in *Re Joint Stock Discount Company, Sichell's case*, Law Rep. 3 Ch. App. 122.

In his judgment Lord Cairns said: "It is sufficient in this case to decide, and I do not do more than decide, that a Company after failure cannot come through its official liquidator and ask to remove one name which is on its register and substitute another, on the ground that the Company ought to have done so before its failure, the person whose name is on the register not himself making any application."

(*e*) *To the vice-warden of the Stannaries in the case of Companies subject to his jurisdiction.*]—As to the jurisdiction and powers of the vice-warden of the Stannaries, see sects. 68, 108, 116, and 172, of this act. The jurisdiction conferred by this section to rectify the register of Companies within the district of the Stannaries, does not exclude the jurisdiction of the Superior Courts of common law and equity for the same purpose. It was thus held by the Court of Chancery Appeal, reversing the decision of Stuart, V. C.: (*Re Penhale and Lomax Consolidated Silver Lead Mining Company*, Law Rep. 2 Ch. App. 398; 36 L. J. Ch. 515; 16 L. T. N. S. 336.)

Where a Company has been established for working mines within the district of the Stannaries, the fact that some of the objects of the Company are to be carried out beyond the district does not exempt the Company from the jurisdiction of the Stannaries Court: (S. C.)

(*f*) *Apply for an order of the court, &c.*]—A motion for the rectification of the register under this section is not irregular merely on the ground that an order has been made for winding-up the Company. But where there are a number of persons in a similar situation, and the official liquidator has taken proper steps for having the question adjudicated upon once for all so as to rule all the cases, the court will not entertain a separate application on the part of one of such persons, but will adjourn the motion to come on with the other similar cases: (*Re the Scottish Universal Finance Bank, Breckenridge's case*, 2 H. & M. 642.)

Where an action is brought for calls, in which the question whether the defendant is, or not, a shareholder will be determined, the court, on an application by such defendant to correct the register, by omitting his name, will postpone its decision until the result of the action is known: (*The Alexandra Hall Company, Roebuck's case*, 35 Beav. 467.)

A shareholder in a Company whose Articles of Association contained a clause prohibiting the directors from carrying on the business of the Company, or making calls, until all the shares were taken up, except after a resolution to continue the Company, successfully resisted an action for calls, on the ground that the whole of the shares were not taken up, and that no such resolution had been passed. He then applied, under this section, to the Court of Exchequer to have his name removed from the register. It was held that the power of the court to remove a shareholder's name from the register only existed in the two cases of his name having been improperly entered, or of his having ceased to be a member, and that neither circumstance occurred here. The application was, therefore, refused. It was observed, however, by Martin, B., "I should myself have preferred to inquire whether there were any outstanding debts to which the applicant was liable, and if there were none which could be enforced against him, then I doubt whether we ought not to make the order." And Kelly, C.B., added: "I quite concur with my Brother Martin in thinking that it would be better that we should be informed in cases like the present whether there are any creditors of the Company, and, if so, of what nature, and to what amount": (*Ex parte Ward, Re North Stafford Steel, Iron, and Coal Company* (*Burslem*), *Limited*, Law Rep. 3 Ex. 180.)

(*g*) *Make an order for the rectification of the register.*]—Where a name is removed by an order of the Court of Chancery from the register of members under this section, it must be done by striking through the name with a pen and ink, and then adding a short abstract of the order, thus—"By an order of the Court of Chancery, dated, &c., this name has been erased;" with the signature of the secretary of the Company attached: (*Re Iron Ship Building Company*, 34 Beav. 597.)

(*h*) *Any damages the party aggrieved may have sustained.*]—P.'s name having been placed by a Company unjustifiably on the register of members, he was allowed, against the Company, all his costs of the proceedings in excess of those as between party and party, as well as all preliminary expenses incurred by him, by way of damages under this section: (*Re New Quebrada Company, Pontifex's case*, 15 W. R. 955.)

(*i*) *Necessary or expedient to decide for the rectification of the register.*]—These words are all controlled by the introductory words, "In any proceeding under this section." And the words would have an important operation in many cases; for example, where two persons, claiming adversely upon duplicate transfers from the same transferor, desired to have their rights determined: (*Ward and Henry's case*, Law Rep. 2 Ch. App. 442, *supra*. Lord Cairns, L.J.)

36. *Notice to registrar of rectification of register.*—Whenever any order has been made rectifying the register, in the case of a Company hereby required(*a*) to send a list of its members to the registrar, the court shall, by its order,

direct that due notice of such rectification be given to the registrar.

(*a*) *A Company hereby required, &c.*]—See sect. 26, *supra*, as to what Companies are required to send a list of members to the registrar.

37. *Register to be evidence.*—The register of members shall be *primâ facie* evidence(*a*) of any matters by this act directed or authorised to be inserted therein.

(*a*) *Shall be primâ facie evidence.*]—It is open to a person whose name is on the register to contest his liability, and a person who has never become a shareholder in the proper sense of the word, and who is not estopped by his own conduct from denying that he is a shareholder, is not liable to calls as a shareholder, although he may have been registered as one: (*Bloxam* v. *Metropolitan Cab Company*, 4 N. R. 51.)

As to whether the register by itself would be sufficient evidence of liability if it were not complete in all its parts as directed by sect. 25, *supra*, see *The East Gloucestershire Railway Company* v. *Bartholomew* (Law Rep. 3 Ex. 15), *ante*; *Wolverhampton New Waterworks Company* v. *Hawksford* (7 C. B. N. S. 795; 29 L. J. C. P. 121); *Irish Peat Company* v. *Phillips* (1 B. & S. 598, in error, 629; 30 L. J. Q. B. 114, in error, 363); and *Bain* v. *Whitehaven and Furness Junction Railway Company* (3 Ho. Lords Cas. 1), especially Lord Brougham's dicta at p. 21 of the report.

LIABILITY OF MEMBERS.

38. *Liability of present and past members of the Company.*—In the event of a Company formed under this act being wound-up, every present and past member of such Company shall be liable(*a*) to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

(1.) No past member shall be liable to contribute to the assets(*b*) of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up: (*c*)

(2.) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member: (*d*)

(3.) No past member shall be liable to contribute to the assets of the Company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this act: (*e*)

(4.) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount,(*f*) if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5.) In the case of a Company limited by guarantee, no contribution should be required from any member exceeding the amount of the undertaking entered into on his behalf by the Memorandum of Association:

(6.) Nothing in this act contained(*g*) shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:

(7.) No sum due to any member of a Company,(*h*) in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the Company, payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

(*a*) *Every present and past member of such Company shall be liable, &c.*]—In connection with this section see now "The Companies Act, 1867," s. 5, as to the liability of directors or managers whose liability is in pursuance of that act unlimited.

In the winding-up of a Company (as to which see Part IV. of this act), notwithstanding the provisions of this section, there is much practical difficulty in enforcing the liability of past members who have made a complete transfer of their shares. This will appear from the cases that follow. The contributories of a Company in course of liquidation form two classes, one termed List A., consisting of those who are shareholders at the time of the winding-up, the other called List B., of those who were shareholders at any time within twelve months before. In order to reach List B., it must first be shown that the assets of the Company are exhausted, which necessarily requires some time, and in the next place this section limits the liability of a person on List B. to the debts contracted before the time at which he ceased to be a member, the result of which is that the debts must be analysed, so as to distribute them among the shareholders according to the liability of each. This is a most difficult task to be performed with a body of persons shifting from day to day.

(*b*) *No past member shall be liable to contribute to the assets, &c.*]—The N. Company having become amalgamated with the C. Bank, B., one of

the shareholders of the Company, in answer to an application for shares in the bank, received from the manager a letter inclosing such shares in lieu, as was stated, of the shares held by B. in the Company. There was no entry in the register of this exchange, nor did it appear that the other shareholders of the Company had assented to it. More than a year afterwards the Company was wound-up, and B.'s name having been placed on the list of contributories, he applied to the court to have it removed on the ground that he had ceased to be a shareholder in the Company from the date of the exchange. It was held that he was not entitled to have his name removed from the list: (*Re National Financial Company, Ex parte Nash*, 16 L. T. N. S. 689, Ch.)

Where the Articles of Association of a Company provided that the forfeiture of a share should involve the extinction of all interest in, and all claims against, the Company in respect of the shares, but that any member whose shares had been forfeited should be liable to pay to the Company all calls owing on such shares at the time of such forfeiture, the Master of the Rolls held that the former owner of forfeited shares could not be placed on the list of contributories as a present member in respect of the calls owing on his shares at the time of forfeiture. And it seems no person can be settled on the list of contributories as a past member until it has been actually ascertained that the present members are unable to satisfy the contributions required to be made by them: (*Re Blakely Ordnance Company, Needham's case*, Law Rep. 4 Eq. 135; 36 L. J. Ch. 665; 16 L. T. N. S. 472.)

It has been held that a shareholder who, within a year before the commencement of a winding-up, transferred shares which were afterwards forfeited in the hands of the transferee, was liable to be placed on the list of contributories as a past member: (*Re Accidental and Marine Insurance Corporation, Bridger's case* and *Neill's case*, Law Rep. 4 Ch. App. 266.)

See *Re North Hallenbeagle Mining Company, Knight's case*, Law Rep. 2 Ch. App. 321.

See *Re China Steamship and Labuan Coal Company, Capper's case* (Law Rep. 3 Ch. App. 458), where a transferor of shares was made a contributory a year and a half after he transferred his shares, on the ground that the transferee was an infant.

(*c*) *Prior to the commencement of the winding-up.*]—Sect. 84, *infra*, provides that a winding-up by the court shall be deemed to commence at the time of the presentation of the petition to wind-up; by sect. 130, *infra*, a voluntary winding-up shall be deemed to commence at the time of passing the resolution authorising such winding-up.

(*d*) *At which he ceased to be a member.*]—He may be called on to contribute to the payment of all debts and liabilities incurred prior to this time; and it is not necessary to show that all the debts incurred before he ceased to be a member were not incurred before he became a member: (*Re Barned's Banking Company, Helbert's case*, Law Rep. 6 Eq. 509.)

(*e*) *The contributions required to be made by them in pursuance of this act.*]—Where a Company is being wound-up by the court, the proper mode of ascertaining the liabilities of the various classes of contributories is to have resort, first, to those who are contributories at the time of the winding-up order; secondly, to those who transferred their shares to them within one year before the winding-up order; and,

thirdly, to the transferors of those shares to that latter class within the same period.

Where a Company is being wound-up by the court, and there is one set of creditors which has two sets of contributories against whom they can proceed, while another set of creditors has only one set of contributories who are liable to them—the one set of creditors must be postponed as to their payment till they get it from that class of shareholders against whom the subsequent creditors cannot go: (*Re Barned's Banking Company, Andrew's case*, Law Rep. 4 Eq. 458; 16 L. T. N. S. 656, Ch.)

On appeal this order of the Master of the Rolls was affirmed, and it was held that where it appeared that the calls which could be enforced and realised against the present members would not satisfy all the debts of the concern, the act requires past members (who have not ceased to be so for a year prior to the winding-up) as well as present ones to be placed on the list of contributories as soon as may be, after the winding-up order is made: (S. C. Law Rep. 3 Ch. App. 161.)

But a past member who ceased to be a member within a year before the commencement of the winding-up, cannot be placed on the list of contributories until it is proved, first, that there was at the date of the winding-up order some existing debt or liability of the Company contracted before he ceased to be a member; and, secondly, in the case of a limited Company, that the shares formerly held by him have not been fully paid up: (*Re Contract Corporation, Weston's case*, Law Rep. 6 Eq. 17.)

(*f*) *No contribution shall be required from any member exceeding the amount, &c.*]—Although the holders of fully paid-up shares are thus exempted from liability to contribute to the assets of the Company, yet they are contributories within the meaning of this act, so as to have the power to present a petition for winding-up under sect. 82: (*Re National Savings Bank Association*, Law Rep. 1 Ch. App. 547.) And are entitled to have calls made upon the partly paid-up shareholders, for the purpose of adjusting the rights between themselves and the latter, in a winding-up of the Company, under sect. 102 where the winding-up is compulsory, and under the 9th clause of sect. 133 where it is voluntary: (*Re Anglesea Colliery Company*, Law Rep. 1 Ch. App. 555.)

Where it was sought to put a paid-up shareholder on the list of contributories on the ground that he was indebted to the Company, it would not be permitted: (*Re Marlborough Club Company*, Law Rep. 5 Eq. 365.)

Shares may be fully paid up, not only in money, but in money's worth, and shares which are *bonâ fide* given as paid up, in payment for property given to the Company, or of services rendered to it, or of other claims against it, must be treated as paid-up shares on the winding-up of the Company: (*Re Great Northern and Midland Coal Company, Ex parte Currie*, 11 W. R. 46.) But shares improperly issued as paid-up when they are not so will be treated as not paid-up: (*Re Universal Provident Life Association, Daniell's case*, 23 Beav. 568; *Re Cosmopolitan Life Assurance Company, Nickolls's case*, 639.)

In *Needham's case, Re Blakely Ordnance Company* (36 L. J. 665; Law Rep. 4 Eq. 135), the Master of the Rolls expressed an opinion that shares which had been declared forfeited were not annihilated, but were remaining and existing shares at the time of winding-up, so as to come within this clause of the section.

The forfeiture of shares is not equivalent to payment or satisfaction of what is at the time uncalled on the forfeited shares: (*Re Accidental and Marine Insurance Corporation, Bridger's case* and *Neill's case*, Law Rep. 4 Ch. App. 266.)

See now "The Companies Act, 1867," s. 24, as to the power of a Company to have some of its shares fully paid-up and others not, and sect. 25, as to *all* shares being subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract in writing.

(*g*) *Nothing in this act contained, &c.*]—See *Halkett* v. *The Merchants, Traders, &c., Insurance Association* (19 L. J. Q. B. 59; 13 Q. B. 960), *Hickman* v. *Cambrian and Universal Insurance Company* (28 L. J. Ex. 379), *Re Athenæum Life Assurance Company* (27 L. J. Ch. 798), and cases decided under the repealed act, 7 & 8 Vict. c. 110.

(*h*) *No sum due to any member of a Company, &c.*]—Two ladies, trustees, deposited a sum of trust-moneys in a public banking Company at interest. The association was subsequently ordered to be wound-up. A first dividend had been declared, and the official liquidator refused to pay these ladies the dividend so declared on the amount deposited by them, on the ground that as one of them was a contributory, and entitled in her own right to a life interest in a portion of the trust-funds, he had a right to set off the calls due from her as such against the dividend due to both of them. It was held, however, that no right of set-off existed, and the dividend was ordered to be paid to them: (*Re Imperial Mercantile Credit Association*, 16 L. T. N. S. 314, Ch.)

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

PROVISIONS FOR PROTECTION OF CREDITORS.

39. *Registered office of Company.*—Every Company under this act shall have a registered office to which all communications and notices may be addressed.(*a*) If any Company under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

(*a*) *To which all communications and notices may be addressed.*]—The court, on an *ex-parte* application, directed a winding-up petition to be served on the chairman and general manager only of a Company proposed to be wound-up, and which had no known place of business: (*Re National Credit and Exchange Company*, 7 L. T. N. S. 817, Ch.)

In another case the court ordered a winding-up petition to be served on any five of the directors of a Company which had shut up its office and transferred its business to another office: (*Re Unity General Assurance Association*, 8 L. T. N. S. 160, Ch.)

See, also, *Re Inventors' Association*, 6 N. R. 349.

A demand under sect. 80 of this act may be made by a creditor for the payment of his debt at a Company's unregistered office where the Company has no registered office: (*Re British and Foreign Gas Generating Apparatus Company*, 11 Jur. N. S. 559, Ch.; 12 L. T. N. S. 368.)

A registered joint-stock Company for the manufacture and sale of goods dwells and carries on business within sect. 128 of the 9 & 10 Vict. c. 95, at the place of manufacture and sale, and not at the registered office of the Company.

A registered joint-stock Company, established for quarrying and calcining limestone, and making and selling lime, and carrying on the business of a lime, cement, brick, and manure, Company, and the purchasing lands in Somerset or elsewhere, incidental to those objects, sold and delivered goods to the defendant; the works of the Company and the order, sale, and delivery of the goods, and the defendant's dwelling and place of business being within the jurisdiction of the Bristol County Court. The registered office of the Company under the Memorandum of Association, and where the meetings of the directors were held and all their business was transacted, was in London. The Company being wound-up, the official liquidator, who dwelt and carried on business in London, sued the defendant in the Superior Courts, and the defendant having suffered judgment by default for an amount under 20*l.*, it was held that the plaintiff was not entitled to costs: (*The Keynsham Blue Lias Lime Company* v. *Baker*, 2 H. & C. 729; 33 L. J. Ex. 41; 9 Jur. N. S. 1346; 9 L. T. N. S. 418.)

But a promenade pier Company, whose objects were the erection and maintenance of a pier and the levying of tolls thereon at Aberystwith, but whose registered offices were at Westminster, where the substantial business of the Company and their negotiations were carried on, was held to "dwell" at Westminster, and not at Aberystwith, within the meaning of 9 & 10 Vict. c. 95, s. 128, and 15 & 16 Vict. c. 54, s. 4: (*Aberystwith Promenade Pier Company* v. *Cooper*, 35 L. J. Q. B. 44; 13 L. T. N. S. 273.)

See, also, *Brown* v. *The London and North-Western Railway Company*, 4 B. & S. 326.

40. *Notice of situation of registered office.*—Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him. Until such notice is given(*a*) the Company shall not be deemed to have complied with the provisions of this act with respect to having a registered office.

(*a*) *Until such notice is given, &c.*]—If a Company carry on business before such notice is given they become liable to the penalty mentioned in the last section.

41. *Publication of name by a limited Company.*—Every limited Company under this act,(*a*) whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried

on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company.

(*a*) *Every limited Company under this act, &c.*]—See now, however, "The Companies Act, 1867," s. 23, *post*, as to associations formed for purposes not of gain.

42. *Penalties on non-publication of name.*—If any limited Company under this act does not paint or affix, and keep painted or affixed, its name in manner directed by this act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such Company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such Company, or signs or authorises to be signed on behalf of such Company,(*a*) any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the Company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the Company.

(*a*) *Signs or authorises to be signed on behalf of such Company, &c.*]—An acceptance would come within the meaning of the word "signs." Where P. had directed a bill to a Company of limited liability by the name of the S. Steam Packet Company, its full name being the S. Steam-Packet Company, Limited, J. M., who was secretary to the Company, wrote across it, "Accepted, payable at Messrs. B. & Co.; J. M., secretary to the said Company." The bill was not honoured, and it was held, on demurrer to a plea, that J. M. was personally liable to P. under "The Companies Act, 1856" (19 & 20 Vict. c. 47), s. 31: (*Penrose* v. *Martyr*, E. B. & E. 499; 28 L. J. Q. B. 28.)

As to the issue of negotiable instruments generally by a Company under this act, see sect. 47, *infra*.

43. *Register of mortgages.*—Every limited Company under this act shall keep a register of all mortgages and charges specifically affecting property (*a*) of the Company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the Company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times; and if such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty as respects Companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the Stannaries in the case of Companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

(*a*) *A register of all mortgages and charges specifically affecting property, &c.*]—It is to be observed that this section only requires charges *specifically* affecting the property of the Company to be registered, and that it in no way touches the validity of such charges where the registration has been omitted.

The following form may be used:

Property charged.	Amount of charge.	Name of Mortgagee.	Rate of Interest.	Date of Charge.
The Silk Manufactory, also the machinery therein.	£10,000	A. B. of	5 per cent.	April 25, 1869

44. *Certain Companies to publish statement entered in schedule.*—Every limited banking Company and every insurance Company (*a*) and deposit, provident, or benefit society under this act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business

make a statement in the form marked D. in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company, and in every branch office or place where the business of the Company is carried on, and if default is made in compliance with the provisions of this section the Company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

(*a*) *Every insurance Company, &c.*]—The section does not use the word "formed" under this act, and consequently it applies to all existing insurance Companies who are thus compelled twice in every year to post in their places of business a statement in the form marked D. in the first schedule to this act. For the form of statement, see *post.*

45. *List of directors to be sent to registrar.*—Every Company under this act, and not having a capital divided into shares, shall keep at its registered office(*a*) a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-Stock Companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

(*a*) *Shall keep at its registered office, &c.*]—The next section provides for the penalty to be incurred by a Company neglecting this duty.

46. *Penalty on Company not keeping register of directors.*—If any Company under this act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty(*a*) not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

(*a*) *Such delinquent Company shall incur a penalty, &c.*]—As to the recovery of penalties, see sect. 65, *infra.*

47. *Promissory notes and bills of exchange.*—A promissory note or bill of exchange(*a*) shall be deemed to have been made, accepted, or indorsed on behalf of any Company under this act, if made, accepted, or indorsed in the name of the Company by any person acting under the authority of the Company, or if made, accepted, or indorsed by or on behalf or on account of the Company (*b*) by any person acting under the authority of the Company.

(*a*) *A promissory note or bill of exchange, &c.*]—This act does not confer on all Companies registered under it a power of issuing negotiable instruments; but such a power exists only where, upon a fair construction of the Memorandum and Articles of Association, it appears that it was intended to be conferred . (*Peruvian Railways Company* v. *The Thames and Mersey Marine Insurance Company, Re Peruvian Railways Company*, Law Rep. 2 Ch. App. 617.)

In this case the Lords Justices rested their decision upon certain general words in the Memorandum and Articles of Association of the Company, by which the directors had "power to do all things and make and perform all contracts, which, in their judgment, were necessary and proper for the purpose of carrying into effect the object mentioned in the memorandum." The object of the Company was to have itself converted into a *société anonyme* abroad, and there become the grantee of certain concessions for making railways. Such a purpose would not empower the Company to issue negotiable instruments: (*Bateman* v. *Mid-Wales Railway Company*, Law Rep. 1 C. P. 499.)

It must be admitted that general words are not always considered to have the extensive signification allowed them by the Lords Justices in this case.

It was decided in this case also, that though a director was aware that bills indorsed for value to his Company were bills which had been accepted for the accommodation of the drawer, yet as the director was not concerned on behalf of his Company in the transaction in which the bills were indorsed to them, his knowledge should not be held to affect the Company with notice of the fact of their being accommodation bills.

The implied power of a Company to make a bill or note is connected in principle with their power to borrow money. This power varies, of course, with different Companies. A power to borrow is so necessary to a banking Company, that its directors can scarcely be deprived of it. See *Bank of Australasia* v. *Breillat* (6 Moo. P. C. 152 ; 12 Jur. 189), *Royal British Bank* v. *Turquand* (5 E. & B. 248 ; 6 *Ib.* 327), and *Galloway's case* (18 Jur. 885. V.C. S.) The managers of a benefit-building society, on the other hand, have no power to borrow : (*Kent Benefit Building Society*, 1 Dr. & Sm. 417.)

The question whether directors have the power to issue negotiable instruments depends partly on the statutes relating to the Bank of England. If these statutes do not apply, and the business of the Company is such that it cannot be carried on in the ordinary way without the use of bills, &c., its directors in such cases have power to draw, accept, and indorse bills in the name and on behalf of the Company : (*Mayor of Ludlow* v. *Charlton*, 6 M. & W. 821 ; *Murray* v. *East India Company*, 5 B. & Ald. 204.)

There are decisions to the effect that Companies of the following description do not carry on such trades as would imply a power in their directors respectively to issue negotiable instruments : A salvage Com-

pany (*Thompson* v. *Universal Salvage Company*, 1 Exch. 694); a mining Company (*Dickinson* v. *Valpy*, 10 B. & C. 128; *Brown* v. *Byers*, 16 M. & W. 252); a gas Company (*Bramah* v. *Roberts*, 3 Bing. N. C. 963); a waterworks Company (*Broughton* v. *Manchester, &c., Waterworks Company*, 3 B. & Ald. 1); a cemetery Company (*Steele* v. *Harmer*, 14 M. & W. 831; reversed, but not on this point, 4 Exch. 1); a salt and alkali Company (*Bult* v. *Morell*, 12 A. & E. 745); a railway Company (*Bateman* v. *Mid-Wales Railway Company*, Law Rep. 1 C. P. 499).

In short, Companies having only a quasi-trading character have not necessarily the power of issuing negotiable instruments; and the question may be properly raised by a plea denying the acceptance, though the acceptance has been given by order of the directors and under the common seal of the Company: (*Bateman* v. *Mid-Wales Railway Company*, Law Rep. 1 C. P. 499.)

Unless the paper purports to be the paper of a Company, no one whose name is not on it is liable to be sued thereon.

An authority to transfer a bill may exist without an authority to make such an instrument. In *Smith* v. *Johnson* (3 H. & N. 222) it was accordingly held that the plaintiff was entitled to sue the acceptor, although the indorsement of the bill to him by a Company who had held it was put in issue, and the directors who had indorsed the bill in blank for the Company had no power so to indorse.

Where the directors of a Company have power to bind it by bills and notes, such instruments issued by them improperly, but in the name of the Company, are binding on it in favour of any *bonâ fide* holder for value, without notice of the impropriety: (*Gordon* v. *Sea, Fire, and Life Assurance Company*, 1 H. & N. 599; *Forbes* v. *Marshall*, 11 Exch. 166; *Maclae* v. *Sutherland*, 3 E. & B. 1; *Stark* v. *Highgate Archway Company*, 5 Taunt. 791; *Thompson* v. *The Wesleyan Newspaper Association*, 8 C. B. 849.)

Such a holder is not bound to inquire whether the instrument has been so accepted in accordance with the provisions of the Articles of Association: (*Re Blakely Ordnance Company, Ex parte Mercantile and Exchange Bank*, W. N. 1867, p. 147.) *Omnia præsumuntur ritè et solemniter esse acta.*

The Articles of a Company contained no provisions as to the issue of negotiable instruments, but the objects of the Company were such that a power to issue them was to be implied. The directors gave to H. for value an instrument under the seal of the Company, headed "debenture," and stamped as a deed, by which the Company undertook "to pay to the order of J. H., on the first of July, 1867," 1000*l.*, with interest half-yearly, on presentation of the annexed interest warrants. It was held (reversing the decision of the Master of the Rolls), that the indorsee and transferee for value of this instrument was entitled to prove on it against the Company, free from any equities between H. and the Company.

It was considered by Wood, L.J., the better opinion that the instrument was a promissory note, but, if not, the Company were bound by their promise, publicly held out by the instrument, that they would pay to the order of H. His Lordship therefore held that the Company could not set up against a transferee equities between themselves and H.

Selwyn, L.J., held that the instrument was a promissory note: (*Re General Estates Company, Ex parte City Bank*, Law Rep. 3 Ch. App. 758.)

See *Agra and Masterman's Bank, Ex parte Asiatic Banking Corporation*, Law Rep. 2 Ch. App. 391.

In the case of *Re the General Estates Company*, Wood, L.J., dwelt on the facts that the instrument in question was in the ordinary form of a promissory note, except that the word "undertake" was substituted for promise, and that in the Company's articles there was no provision authorising the Company to issue negotiable instruments not under seal.

Selwyn, L.J., thought the case stronger than that of *Agra and Masterman's Bank* (Law Rep. 2 Ch. 391), because there the document was a letter of credit, which could be put an end to at any time. But in the present case these instruments were finally issued by way of cash payments.

In the case of *The Agra and Masterman's Bank*, the bank gave to D. T. and Co. a letter addressed to them, and expressed thus:—"No. 394. You are hereby authorised to draw upon this bank to the extent of 15,000*l.*, and such drafts I undertake duly to honour on presentation. This credit will remain in force for twelve months from its date, and parties negotiating bills under it are requested to indorse particulars on the back hereof." D. T. and Co. drew bills under this letter to the amount of 6000*l.*, and indorsed them to the appellant, who duly indorsed particulars on the letter of credit. The bank was afterwards ordered to be wound-up, and D. T. and Co. were indebted to the bank to an amount exceeding what was due on the bills. Held by the Lords Justices (reversing the decision of Wood, V.C.), that, whatever might be the effect of the letter of credit at law, it constituted a contract, to the benefit of which all persons taking and paying for bills on the faith of it were entitled in equity, without regard to the equities between the bank and D. T. and Co., and that the appellant was entitled to prove for the amount due on the bills, without regard to the state of the account between the bank and D. T. and Co.

Cairns, L.J., seems to have considered that even *at law* the same ruling should be arrived at. This, doubtless, is the better opinion.

Company A. guaranteed bills for 35,000*l.* accepted by Company B., and Company B. assigned to Company A. certain property as security for the payment of the bills. Both Companies were wound-up by the court, and the holders of the bills, who had no notice of the security, proved against both estates for the whole amount of the bills, and recovered from Company A. 21,000*l.*, and from Company B. 5250*l.*, and afterwards the security was realised and produced 23,500*l.* It was held that the proceeds of the security were part of the estate of Company A., and were divisible among its creditors: (*Re Joint-Stock Discount Company, Loder's case*, Law Rep. 6 Eq. 491.)

M. drew bills upon the B. and A. Company, and a banking Company under an agreement with M., guaranteed the acceptors (also a Company) that they would supply them with funds to meet the bills. S. discounted the bills, being informed by M. of the guarantee of the banking Company, but he gave no notice to the banking Company or to the acceptors. Afterwards the banking Company and the acceptors suspended payment and were wound-up. M. also executed a deed of composition with his creditors. It was held (affirming the decision of the Master of the Rolls), that S. had no equity to rank as a creditor of the banking Company in respect of the guarantee. *Inman* v. *Clare* (Joh. 769) and *Re Agra and Masterman's Bank* (Law Rep. 2 Ch. 391) were distinguished: (*Re Barned's Banking Company, Stephen's case*, Law Rep. 3 Ch. App. 753.)

A. drew bills upon B., a banking Company, which B. accepted. A. deposited securities with B. to secure B. against loss. A. discounted those bills with C., another banking Company. B. and C. being both

in course of winding-up, and A. being bankrupt, the official liquidator of C. took out a summons against the official liquidator of B., to obtain payment of the bills out of the proceeds of the sale of deposited securities. It not being clear whether B. Company was insolvent or not, the Master of the Rolls directed the summons to stand over until that was ascertained, and in the meantime the proceeds of the sale to be earmarked and not dealt with without notice to C. Company: (*Re the New Zealand Banking Corporation, Limited, Ex parte the Bank of Hindustan*, 15 W. R. 954, M. R.; 16 L. T. N. S. 654.)

Where the assets of a Company in course of winding-up consist partly of bills of exchange, the official liquidator will not be allowed to negotiate them without the leave of the court. A banking Company winding-up held bills accepted by A., who was a creditor of the Company to a larger amount than the bills. The court refused to discharge an order restraining the negotiation of the bills by the official liquidator. A. could set off his debt against the bills of exchange: (*Re Commercial Bank Corporation of India and the East*, 14 L. T. N. S. 613; 35 L. J. Ch. 617.)

The stoppage of a Company is not *per se*, there not having been made any request to it for acceptance, a breach of a contract to accept bills: (*Re Agra and Masterman's Bank, Limited, Tondeur and Lempriere's case*, Law Rep. 5 Eq. 160.)

The following promissory note was signed by the secretary of an incorporated Company: "1500*l*. On demand I promise to pay Messrs. Alexander and Company, or order, the sum of 1500*l*., with legal interest thereon until paid, value received the 16th of August, 1865. For Mistley, Thorpe, and Walton Railway Company, John Sizer, secretary." In an action on the note by the payees against the secretary, it was held (per Kelly, C. B., and Pigott, B., Cleasby, B. hesitating) that he was not personally liable: (*Alexander* v. *Sizer*, Law Rep. 4 Ex. 102.)

The decision in *Alexander* v. *Sizer* followed that in *Lindus* v. *Melrose* (2 H. & N. 293; S. C. in Ex. Ch. 3 H. & N. 177; 27 L. J. Ex. 326), where directors by a note "jointly promised" to pay 600*l*. as "directors." The instrument being a note, and not a bill of exchange, they were held not to be liable. See *Aggs* v. *Nicholson*, 1 H. & N. 165.

There is, consequently, a distinction between promissory notes and bills of exchange with respect to this point. "Bills of exchange are all drawn on the intended acceptor in a personal character, and if he accept them he must be held to have done so in that character, and will be held liable, no matter what words of mere description may be added to his name": (*Alexander* v. *Sizer*, *supra*. Kelly, C.B.)

(*b*) *Made, accepted, or indorsed by or on behalf or on account of the Company, &c.*]—A promissory note signed by the defendants, who described themselves on the note as directors of the Financial Insurance Company (Limited), and countersigned by the manager, was in these words: "Three months after date we promise to pay the English Joint-Stock Bank (Limited), or order, the sum of 1000*l*., value received." It was held that the note pledged the personal liability of the makers, and that an equitable plea, alleging the form of the note to have been a mistake, and the intention to have been to make the Company only responsible, was not proved if the payee maintained that he always intended to secure the maker's personal liability: (*Courtauld* v. *Saunders*, 16 L. T. N. S. 562, C. P.; 15 W. R. 906, C. P.)

It appears from this case that a person signing or indorsing a note or bill under this section must do so "on account of the Company" or "on behalf of the Company," in order to avoid personal liability. See, also, *Penrose* v. *Martyr*, 28 L. J. Q. B. 28.; E. B. & E. 499.

By the Deed of Settlement of a Company established under the 7 & 8 Vict. c. 110 (now repealed) the directors were empowered to issue bills of exchange and promissory notes, but such bills and notes were only to bind the shareholders to the extent of their interests in the Company. The directors, by deed-poll under the common seal of the Company, and signed by three directors, appointed an agent in Canada, and empowered him to draw bills of exchange upon the Company. To discharge claims against the Company in Canada, the agent drew and gave there two bills of exchange, such bills containing no notice of any restricted liability. Upon the Company being wound-up, the holders of these bills put in claims for the amount, together with interest and damages calculated according to certain statutes of Canada: and it was held that the appointment of the agent was valid, and that the bills in question were well drawn by him so as to bind the Company, notwithstanding the 45th section of the act, and notwithstanding also the provisions in the Deed of Settlement for limiting the liability of the shareholders; and accordingly that the holders of the bills were entitled to prove under the winding-up against the Company It was held also that the proof being against the Company as the virtual drawers, the claimants were entitled to the interest and damages given by the law of Canada, where the bills were drawn: (*Re the State Fire Insurance Company, Ex parte Meredith's claim*, 32 L. J. Ch. 300; 8 L. T. N. S. 146.)

A proviso in a bill of exchange drawn by a joint-stock Company, limiting the liability thereunder, is repugnant and void: (S. C.)

48. *Prohibition against carrying on business with less than seven members.*—If any Company under this act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the Company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

PROVISIONS FOR PROTECTION OF MEMBERS.

49. *General meeting of Company.*—A general meeting (*a*) of every Company under this act shall be held once at the least in every year. (*b*)

(*a*) *A general meeting, &c.*]—By sect. 51 of this act notice of any meeting is to be given, the meeting to be held, and the votes to be taken in manner prescribed by the regulations of the Company; and

where there are no regulations on these subjects, they are provided for by sect. 52 of this act.

Under sect. 67 of this act minutes of all resolutions and proceedings of general meetings are to be kept, and such minutes are made receivable as evidence in all legal proceedings.

(*b*) *Once at the least in every year.*]—By "The Companies Act, 1867," s. 39, *post*, every Company formed under this act must hold a general meeting within four months after its Memorandum of Association is registered.

50. *Power to alter regulations by special resolution.*—Subject to the provisions of this act, and to the conditions contained in the Memorandum of Association, (*a*) any Company formed under this act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, (*b*) alter all or any of the regulations of the Company contained in the Articles of Association or in the table marked A. in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the Company; and any regulations so made by special resolution shall be deemed to be regulations of the Company, of the same validity as if they had been originally contained in the Articles of Association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

(*a*) *The conditions contained in the Memorandum of Association, &c.*]—Sect. 12, *supra*, gives power to alter the Memorandum of Association in certain particulars, and "The Companies Act, 1867," sects. 8, 9, and 21, *post*, further extends this power.

By the Memorandum of Association of a limited Company, registered before the passing of this act (see sect. 176 of this act), it was declared that the nominal capital of the Company should be 120,000*l*., divided into 12,000 shares of 10*l*. each; and, by the 72nd clause of the Articles of Association, it was provided that the directors might, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

The number of shares allotted was 5717, and afterwards, at an extraordinary general meeting, a resolution was passed purporting to enable the directors to issue part of the unallotted shares of the Company with a preferential dividend. No special resolution, under this, or the 12th section of the act, had been passed to alter the Memorandum or Articles of Association. It was held (affirming the decision of Sir R. T. Kindersley, Vice-Chancellor), that the resolution was *ultra vires*, and not binding on a dissentient shareholder. And it seems this section, even if it had been complied with in form, would not have empowered the Company to have struck out the 72nd clause of the Articles of Association, the Memorandum of Association remaining unaltered, and the 12th section of the act containing no power to alter the memorandum to the extent proposed: (*Hutton* v. *The Scarborough Cliff Hotel*

Company, 2 Dr. & Sm. 521 ; 11 Jur. N. S. 551, Ch., on appeal ; 12 L. T. N. S. 228, and 12 L. T. N. S. 289.)

See, also, *Bryon* v. *Metropolitan Saloon Omnibus Company*, 3 De G. & J. 123.

(*b*) *Passing a special resolution in manner hereinafter mentioned.*]—See the two following sections as to the mode of holding a general meeting and passing a special resolution.

51. *Definition of special resolution.*—A resolution passed by a Company under this act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members(*a*) of the Company for the time being entitled, according to the regulations of the Company,(*b*) to vote as may be present, in person or by proxy (in cases where by the regulations of the Company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution(*c*) has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company ;(*d*) in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

(*a*) *A majority of not less than three-fourths of such members, &c.*]—It will be observed that this majority is on the division to be in number and not in value. But this may be remedied by the subsequent provision which permits a poll to be demanded, and in such case, and then only, is the number of votes possessed by each member to be taken into the calculation in computing the majority.

(*b*) *Members entitled according to the regulations of the Company, &c.*]—A prohibition in a Company's articles against a director's voting in respect of any matter in which he has an interest does not preclude him from voting as a shareholder at a general meeting in respect of any such matter.

A bill in the name of a Company was ordered to be taken off the file, under the circumstances; it having been disapproved by a majority of the members of the Company, although its object was to set aside an alleged fraudulent acquisition of shares by a member whose votes in respect of those very shares were necessary to be counted in order to obtain a majority against the bill: (*East Pant Du United Lead Mining Company* v. *Merryweather*, 2 H. & M. 254.)

See, also, *Gregory* v. *Patchett* (33 Beav. 595; 11 L. T. N. S. 357), *ante*.

(*c*) *Notice specifying the intention to propose such resolution.*]—See *Re Bridport Old Brewery Company* (Law Rep. 2 Ch. App. 191), *post*, where notice of a meeting for the purpose of passing a resolution to wind-up a Company voluntarily was held insufficient.

See, also, *The Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan* (Law Rep. 6 Eq. 91), *post*.

(*d*) *Meeting held in manner prescribed by the regulations of the Company.*]—See Table A. in the first schedule to this act, clauses 29 to 51, as to the meetings and proceedings at the meetings of Companies governed by the regulations contained in Table A.

52. *Provision where no regulations as to meetings.*—In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days notice in writing has been served on every member in manner in which notices are required to be served by the table marked A. in the first schedule hereto,(*a*) and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

(*a*) *By the Table marked A. in the first schedule hereto.*]—The manner of serving notices is prescribed by clauses 95—97 of Table A. It will be seen, however, by reference to sect. 15, *supra*, that Table A. only applies when the Company has no regulations excluding or modifying it; where a Company has Articles of Association regulating the service of notices, such regulations should be complied with.

53. *Registry of special resolutions.*—A copy of any special resolution that is passed by any Company under this act shall be printed and forwarded to the Registrar of Joint-Stock Companies, and be recorded by him: if such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty(*a*) not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of

the Company who shall knowingly and wilfully authorise or permit(*b*) such default shall incur the like penalty.

(*a*) *Shall incur a penalty, &c.*]—The manner of recovering and applying penalties under this act is prescribed by sects. 65 and 66.

(*b*) *Who shall knowingly and wilfully authorise or permit, &c.*]—The omission to forward the copy of itself subjects the Company to the penalty; but a director or manager is not liable unless he know of the omission and wilfully authorise or permit it.

54. *Copies of special resolutions.*—Where Articles of Association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the Articles of Association that may be issued after the passing of such resolution.(*a*) Where no Articles of Association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the Company may direct: And if any Company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

(*a*) *That may be issued after the passing of such resolution.*]—Sect. 19, *supra*, provides that copies of the memorandum and articles of a Company are to be given to members.

55. *Execution of deeds abroad.*—Any Company under this act may, by instrument in writing under its common seal, empower any person,(*a*) either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

(*a*) *Any Company under this act may empower any person, &c.*]—See "The Companies Seals Act, 1864" (27 Vict. c. 19), *post*. An act to enable joint-stock companies carrying on business in foreign countries to have official seals to be used in such countries.

56. *Examination of affairs of Company by inspectors.*—The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any Company under this act, and to report thereon, in such manner as the board may direct, upon the applications following;(*a*) (that is to say,)

(1.) In the case of a banking Company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the Company for the time being issued:

(2.) In the case of any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(3.) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

(*a*) *Upon the applications following.*]—As to the payment of the expenses of and incidental to the examination, see sect. 59, *infra*.

57. *Application for inspection to be supported by evidence.*—The application shall be supported by such evidence as the Board of Trade may require (*a*) for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

(*a*) *Such evidence as the Board of Trade may require, &c.*]—The Board of Trade may call upon the applicants to produce evidence in support of the reasons they allege for requiring an investigation. It is, therefore, expedient, for intending applicants to ascertain distinctly the evidence on which they ground their reasons, and for that purpose to take the evidence in writing *before* they frame their reasons.

58. *Inspection of books.*—It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the Company in relation to its business, and may administer such oath accordingly: if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding five pounds (*a*) in respect of each offence.

(*a*) *A penalty not exceeding five pounds, &c.*]—As to the mode of recovering penalties, see sects. 65 and 66, *infra*.

59. *Result of examination how dealt with.*—Upon the conclusion of the examination the inspectors shall report their

opinion to the Board of Trade: such report shall be written or printed, as the Board of Trade directs: a copy shall be forwarded by the Board of Trade to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination(*a*) as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the Company, which it is hereby authorised to do.

(*a*) *All expenses of and incidental to any such examination, &c.*]—It may be observed that the applicants are to be liable for all the costs of the inquiry, unless the Board of Trade shall otherwise direct.

60. *Power of Company to appoint inspectors.*—Any Company under this act may by special resolution appoint inspectors(*a*) for the purpose of examining into the affairs of the Company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the Company in general meeting directs; and the officers and agents of the Company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred(*b*) if such inspector had been appointed by the Board of Trade.

(*a*) *May by special resolution appoint inspectors.*]—It is to be observed that the word used here is "inspectors" simply, while by sect. 56, *supra*, the Board of Trade is authorised to appoint "one or more" inspectors.

(*b*) *As they would have incurred, &c.*—As to these penalties, see sect. 58, *supra*.

61. *Report of inspectors to be evidence.*—A copy of the report of any inspectors appointed under this act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors(*a*) in relation to any matter contained in such report.

(*a*) *As evidence of the opinion of the inspectors, &c.*]—The effect of this section is simply to enable parties to give evidence of the opinion of the inspectors by producing a sealed copy of their report, but it in no way affects the weight to be attached to that opinion when proved.

NOTICES.

62. *Service of notices on Company.*—Any summons,(*a*) notice, order, or other document required to be served upon the Company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the Company, at their registered office.(*b*)

(*a*) *Any summons, &c.*]—The word "summons" here seems not to include a writ of summons; the service of such a writ on an incorporated Company is provided for by sect. 16 of "The Common Law Procedure Act, 1852." See *Towne* v. *London and Limerick Steam Ship Company*, 5 C. B. N. S. 730; 28 L. J. C. P. 217.

(*b*) *At their registered office.*]—As to the registered office of a Company, see sect. 39 of this act.

63. *Rules as to notices by letter.*]—Any document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove(*a*) that such document was properly directed, and that it was put as a prepaid letter into the post-office.

(*a*) *It shall be sufficient to prove, &c.*]—This section enacts nothing as to the description of documents that may be served by post, it only provides for the proof of the service of such documents.

64. *Authentication of notices of Company.*—Any summons, notice, order, or proceeding requiring authentication by the Company, may be signed by any director, secretary, or other authorised officer of the Company, and need not be under the common seal of the Company,(*a*) and the same may be in writing or in print, or partly in writing and partly in print.

(*a*) *Under the common seal of the Company.*]—As to cases where a Company must use their seal, see the note under sect. 18, *supra*.

LEGAL PROCEEDINGS.

65. *Recovery of penalties.*—All offences under this act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders*, or any act amending the

same; and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the act passed in the session of Parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four, intituled *An Act to amend and consolidate the Acts relating to Merchant Shipping,* or any act amending the same, as regards offences in Scotland against that act, not being offences by that act described as felonies or misdemeanors; and as to Ireland, in manner directed by the act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland,* or any act amending the same.

66. *Application of penalties.*—The justices or sheriff imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of Her Majesty's exchequer in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

67. *Evidence of proceedings at meetings.*—Every Company under this act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company (*a*) in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; (*b*) and any such minute as aforesaid, if purporting to be signed by the chairman (*c*) of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, (*d*) shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid, and all acts done

by such directors, (*e*) managers, or liquidators (*f*) shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

(*a*) *Of the directors or managers of the Company.*]—Where the Articles of Association of a Company do not prescribe the number of directors required to constitute a quorum, the number who usually act in conducting the business of the Company will constitute a quorum: (*Re Tavistock Ironworks Company, Lyster's case*, Law Rep. 4 Eq. 233.)

See, also, *Totterdell* v. *The Fareham Blue Brick and Tile Company*, Law Rep. 1 C. P. 674.

(*b*) *To be duly entered in books to be from time to time provided for the purpose.*]—It is the duty of a Company to keep exact and accurate minutes of what takes place at their general meetings, and if these minutes are not forthcoming it will be assumed, as against the Company, that whatever the directors ought to have brought forward at a certain general meeting has been brought forward. See *Re British Provident Life and Fire Assurance Society, Ex parte Lane*, 33 L. J. Ch. 84; 10 Jur. N. S. 25. Westbury, L.C.

Where the Articles of Association of a Company provided for the forfeiture of shares by a resolution of the directors, and entries were made in the books of the Company that the shares were forfeited and had been transferred to the Company, but there was no entry in the minutes of any resolution having been passed by the directors, it was held that the court was bound to assume that such a resolution had been passed: (*Re North Hallenbeagle Mining Company, Knight's case*, Law Rep. 2 Ch. App. 322; 15 L. T. N. S. 546.)

(*c*) *If purporting to be signed by the chairman, &c.*]—Where the entry of a resolution in the minute-book of a corporation, accepting a proposal for a lease of part of the corporate property, was partially erased, it was held, in the absence of evidence to the contrary, that the erasure must be presumed to have been made before the book was signed by the chairman of the meeting at which the resolution was passed: (*The Governor of Steevens' Hospital* v. *Dyas*, 15 Ir. Ch. R. 405.)

See *Re Fresh Provision Preserving Company, Worcester's case* (W. N. 1867, p. 62), where a Company was held bound by minutes signed by the chairman of a meeting, agreeing to give a charge on their property, on the ground that he was a duly-authorised agent within the Statute of Frauds.

(*d*) *By the chairman of the next succeeding meeting, &c.*—These words were absent from the corresponding section to this of "The Joint-Stock Companies Act, 1856" (19 & 20 Vict. c. 47, s. 40), on which see *The Cornwall Great Consolidated Mining Company, Limited*, v. *Bennett* (6 Jur. N. S. 539).

When the minute was signed, not at the next succeeding meeting, but after proceedings taken to wind-up the Company, it was held *primâ facie* evidence: (*Re the Lanharry Hematite Iron Ore Company, Ex parte Stock*, 33 L. J. Ch. 731; 10 Jur. N. S. 790.)

(*e*) *All acts done by such directors, &c.*]—Assuming that a resolution of a board of directors signed by the chairman would be sufficient to revive against a Company a debt barred by the Statute of Limitations, it would seem that the acknowledgment will be vitiated if the resolution was come to by a board meeting at which the creditor was himself

present in his character of director: (*Lowndes* v. *The Garnett and Moseley Gold Mining Company*, 33 L. J. Ch. 418.)

(*f*) *And all acts done by such liquidator shall be valid, &c.*—These words of the section have been held to mean no more than that all proceedings taken by the liquidator before the invalidity of his appointment is shown, shall be held valid; but when his appointment has been shown to be invalid, it is not intended by this section to give validity to his proceedings, and he can neither make a good title on the sale of the assets in a winding-up, nor enforce payment of calls from the contributories: (*Re Bridport Old Brewery Company*, Law Rep. 2 Ch. App. 191.)

68. *Jurisdiction of vice-warden of Stannaries.*—In the case of Companies under this act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the court of the vice-warden of the Stannaries(*a*) shall have and exercise the like jurisdiction(*b*) and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated Companies, but only so far as such jurisdiction or powers are consistent with the provisions of this act and with the constitution of Companies, as prescribed or required by this act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the said court, in causes or matters whereof the court has cognisance, all process issuing out of the same, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any Company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the Crown, on such terms and conditions as the court shall think fit; and all decrees, orders, and judgments of the said court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said court, and the signature of the registrar thereof, shall be judicially noticed by all other courts and judges in England, and shall require no other proof than the production thereof: the registrar of the said court, or the assistant registrar, in making sales under any decree or

order of the court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the acts in that behalf.

(*a*) *The court of the vice-warden of the Stannaries, &c.*]—As to the jurisdiction and powers of the vice-warden of the Stannaries, see sects. 35, 83, 108, 116, and 172, of this act.

(*b*) *Shall have and exercise the like jurisdiction, &c.*]—Where a Company has been established for working mines within the district of the Stannaries, the fact that some of the objects of the Company are to be carried out beyond the district does not exempt the Company from the jurisdiction of the Stannaries Court: (*Re Penhale and Lomax Consolidated Silver Lead Mining Company*, Law Rep. 2 Ch. App. 398; 36 L. J. Ch. 515; 16 L. T. N. S. 336.)

69. *Provision as to costs in actions brought by certain limited Companies.*—Where a limited Company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony(*a*) that there is reason to believe that if the defendant be successful in his defence the assets of the Company will be insufficient to pay his costs, require sufficient security to be given for such costs,(*b*) and may stay all proceedings until such security is given.

(*a*) *If it appears by any credible testimony.*]—In a suit by the liquidators of a limited Company, which was being wound-up, an affidavit by the defendant's solicitor that the plaintiffs would not, if the defendant succeeded, have any assets for the payment of the defendant's costs, was held to be sufficient ground, in the absence of any evidence to the contrary, for ordering the plaintiffs to give security for costs: (*The Official Liquidators of the Isle of Wight and Southampton Steam-boat Company* v. *Rawlins*, 9 Jur. N. S. 887, Ch.)

See last case for observations on *Caillaud's Patent Tanning Company, Limited*, v. *Caillaud*, 26 Beav. 427; 28 L. J. Ch. 357. See, also, *The Australian Company* v. *Fleming*, 4 K. & J. 407.

A defendant is not justified in applying until there is some reason for believing that the assets will be insufficient. He must wait until he is in possession of the necessary facts: (*Washoe Mining Company* v. *Ferguson*, Law Rep. 2 Eq. 371.)

(*b*) *Any judge having jurisdiction in the matter may require sufficient security to be given for such costs.*]—This section makes no alteration in the principle upon which the Court of Chancery refuses to allow a defendant in a cross suit to call upon the plaintiff in the cross suit to give security for costs; the principle being—not that the defendant by suing the plaintiff originally has admitted the jurisdiction, and cannot afterwards question it, but that a person who, though nominally a plaintiff, is actually a defendant, will be allowed freely to defend himself. Where a Company registered under this act was plaintiff in a suit to set aside a policy on which the defendant in the suit had already sued the

Company in an action at law, which was still pending, the Court refused to order the Company to give security, although at the time of the application there was a petition to wind-up the Company, under which it was afterwards wound-up: (*Accidental and Marine Insurance Company* v. *Mercati*, Law Rep. 3 Eq. 200; 15 L. T. N. S. 347.)

A defendant sued by a Company which had called up and expended all its capital, received notice in April, by a report of the directors, that they had no funds to meet a bill which had been drawn on the Company by their manager, and that they recommended an issue of new shares with a preferential dividend. On the 4th of May notice of an extraordinary general meeting for the 12th was given, at which meeting resolutions were passed enabling the directors to borrow a large sum of money on loan. Defendant's extended time for answering expired on the 7th of May, and on the 4th he took out a summons, whereupon he obtained on the 8th a week's further time; and on the 15th he filed his answer. On the same day (though at what hour of the day did not appear), he received notice from the directors that the attempt to raise the money had failed. Wood, V.C., held, that the defendant had not by putting in his answer, waived his right of calling upon the plaintiff Company to give security for costs under this section. A. filed a bill against B., the registered holder of 1000 shares in a Company, and against the Company and their secretary, for specific performance of an alleged contract by B. to transfer the shares to A., and for an injunction to restrain the Company from transferring the shares to any one else than to A. The Company thereupon filed a bill against A. and B., praying for declarations that the alleged contract was fraudulent and void, and that A. and B. were trustees of the shares for the Company. It was held that the second suit was not so strictly in the nature of a cross suit to the first, that A. was deprived of the right of calling upon the Company to give security for costs: (*Washoe Mining Company* v. *Ferguson*, Law Rep. 2 Eq. 371; 14 L. T. N. S. 590.)

It has also been held on an application under this section (varying the order of Wood, V.C.), that the security for costs given by a limited Company is not confined to 100*l.*, but must be for an amount equal to the probable amount of costs payable: (*Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan*, Law Rep. 1 Ch. App. 437; 35 L. J. Ch. 678; 12 Jur. N. S. 493; 14 L. T. N. S. 611.)

This section applies to the case of a Company in course of liquidation, suing by its official liquidator, as well as to the case of a Company suing in the ordinary way: (*Freehold Land and Brickmaking Company* v. *Spargo*, W. N. 1868, p. 94.)

70. *Declaration in action against members.* — In any action or suit (*a*) brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege (*b*) that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other moneys due whereby an action or suit hath accrued to the Company.

(*a*) *In any action or suit, &c.*]—The power to make calls, and the conditions to be observed in enforcing them, depend upon the Articles of

Association, if the Company have any. (See sects. 14, 15, *supra*.) If the Company have none, or if they do not exclude the regulations contained in Table A. (see Schedule 1, Table A., clauses 4—7, *infra*), these regulations apply to the Company.

By sect. 16 of this act calls payable by a member are specialty debts; and an action for their recovery is not, therefore, barred by the lapse of less than twenty years: (*Cork and Bandon Railway Company* v. *Goode*, 13 C. B. 826.)

As to an action brought for a call after the Company had passed a resolution to change its name, but before the change of name had been registered, see *Shackleford, Ford, and Co.* v. *Dangerfield*, *Ib.* v. *Owen* (Law Rep. 3 C. P. 407), p. 13, *ante*.

Where a Company brought an action for a call against a shareholder who was resident in India when he had applied for shares and received notice of their allotment, and who was still resident there when the action was brought, it was held that the case was within sects. 18 and 19 of "The Common Law Procedure Act, 1852," on the ground that the whole cause of action arose within the jurisdiction of the court, except the breach which had no locality: (*Oriental Hotel Company, Limited*, v. *Pelly*, W. N. 1868, p. 256.)

For a form of declaration in an action for calls, see *infra*.

In an action for calls it is only necessary to show three things, viz.—first, that the calls sued for were made in point of fact; secondly, that the defendant is or was a shareholder when the call was made; thirdly, that he has had proper notice of the making of the call.

Evidence of the making of a call is given by proving the resolution by which it was made; this may be done either by the testimony of the Company's secretary or some other person having actual knowledge of the fact, or by the Company's minute-books. See sect. 67, *supra*.

As to the number of directors constituting a quorum, see *Re Tavistock Ironworks Company, Lyster's case* (Law Rep. 4 Eq. 233), and *The Iron Ship-Coating Company* v. *Blunt* (Law Rep. 3 C. P. 484), *infra*.

Where an action was brought on a call made by certain subscribers of the Memorandum of Association of a Company, and it appeared that the persons who made the call were not such a quorum of the subscribers of the memorandum as the Company's articles required, the defendant was held not liable: (*The Howbeach Coal Company* v. *Teague*, 5 H. & N. 151; 29 L. J. Ex. 137; 6 Jur. N. S. 275; 2 L. T. N. S. 187.)

The appointment, &c., of directors *de facto* who have made the calls cannot afterwards be questioned. See sect. 67, *supra*.

The Articles of Association of a Company provided that any director who should accept or hold any other office under the Company than that of manager, should thereupon be disqualified from being and should cease to be a director. A. had been appointed secretary at a salary, and whilst secretary he was elected a director, and appointed upon a committee to exercise certain powers of the directors. From the time of his election he received salary as a committeeman, but ceased to receive salary as secretary, though he continued to perform all the duties of the office. It was held that A. did not hold an "office" under the Company so as to disqualify him from being party as a director to the making of a call: (*The Iron Ship-Coating Company, Limited*, v. *Blunt*, Law Rep. 3 C. P. 484.

Evidence that the defendant is or was a shareholder is usually given by the production of the Company's register, as to which see sects. 25 and 37 *supra*.

But a person who has never become a shareholder in the proper sense of the word, and who is not estopped by his own conduct from denying that he is a shareholder, is not liable to calls as a shareholder, although he may have been registered as one: (*Bloxam* v. *Metropolitan Cab Company*, 4 N. R. 51.)

Evidence that the defendant received due notice of the making of the call must be given by showing that such notice as he was entitled to receive either actually reached him, or was so sent to him as to have probably reached him. This will be sufficient, in the absence of evidence, that what was so sent him did not reach him.

But a shareholder is not indebted on account of a call until due notice of such call and of the time and place for payment of it shall have been given, in accordance with the provisions of the Articles of Association: (*Rudolph* v. *The Inns of Court Hotel Company*, 8 L. T. N. S. 551, Q.B.)

It has been held that where the Articles of Association of a Company require a notice of call to be repeated within a certain time, a notice that the Company will require money at that time, but not a repetition of the former notice, is not sufficient: (*The Chubwa Tea Company of Assam* v. *Barry*, 15 L. T. N. S. 449. Byles, J.)

As to notice of call sent to a shareholder after the Company had passed a resolution to change its name, but before registration of the new name, see *Shackleford, Ford, and Co.* v. *Dangerfield, Ib.* v. *Owen* (Law Rep. 3 C. P. 407), p. 13, *ante*.

Defence to Actions for Calls.

In an action by a railway Company against a shareholder for calls, it was held that the defendant could not claim to inspect the minute books of the Company and of the directors' meetings, "particularly with respect to the calls" sued upon, for the purpose of framing his plea; and a rule *nisi* for such inspection was refused: (*The Birmingham, Bristol, and Thames Junction Railway Company* v. *White*, 1 Q. B. 282.)

In an action for calls the defendant alleged that he was not a member of the Company, that the Company was not properly formed, and that he was exempted by the terms of the articles from any further claim. It was held that it was not necessary to have signed the Memorandum of Association, nor to have paid calls, to make a registered applicant a member. That where the prospectus proposed to incorporate a previously existing Company, and the articles made an arrangement for buying out of the funds of the new Company the shares in the old one at their full value, the variance was not sufficient to invalidate the Company. And that an equitable plea, to the effect that no further calls had been contemplated, could not be considered to exempt the defendant from claim: (*Accidental and Marine Insurance Corporation* v. *Davis*, 15 L. T. N. S. 182, C. P.)

To an action for calls on shares in a joint-stock Company incorporated under the 19 & 20 Vict. c. 97, it was held to be no answer, that the defendant became a shareholder upon the faith that the capital of the Company would be of the amount stated in the Memorandum of Association, and that only a small, insignificant, and insufficient portion thereof was subscribed: (*The Ornamental Pyrographic Woodwork Company* v. *Brown*, 2 H. & C. 63.)

Compare with this the case of *The Howbeach Coal Company* v. *Teague*, 5 H. & N. 151; 29 L. J. Ex. 137; 2 L. T. N. S. 187.

Where Articles of Association provided that in case the whole of the

shares into which the nominal capital was divided should not be subscribed for or allotted, the registered members of the Company for the time being should, if the directors should by resolution so declare, be and continue associated for the objects thereof, and the regulations of the Company should be in force, &c, it was held that until the whole of the capital was subscribed for or allotted, or the directors had passed a formal resolution for continuing the Company, the directors had no power to make a call, and a call so made could not be recovered against a shareholder: (*North Stafford Steel, Iron, and Coal Company* (*Burslem*), *Limited*, v. *Ward*, Law Rep. 3 Ex. 172.)

To an action by a Company against a shareholder for calls, the defendant pleaded that he was induced to become a shareholder by the fraud of the plaintiffs; that he had never recognised, since notice of the fraud, any rights or liabilities in him, as such shareholder, nor received any benefit from his shares, and that within a reasonable time after notice of the fraud he had repudiated the shares, and given notice to the plaintiffs of his repudiation. On demurrer this was held a good plea: (*The Bwlch-y-Plwm Lead Mining Company* v. *Baynes*, Law Rep. 2 Ex. 324; 36 L. J. 183, Ex.; 16 L. T. N. S. 597.)

See, also, *The Glamorganshire Iron and Coal Company* v. *Irvine*, 4 F. & F. 947; 15 L. T. N. S. 52.

To an action commenced by a joint-stock Company, and continued by the official manager under the winding-up acts, for calls on shares held by the defendant, he pleaded that he was induced to become the holder of the shares by fraud, and within a reasonable time after he had notice of the fraud, and before he received any benefit from the contract, he repudiated it. It was held that the plaintiff was entitled to particulars of the acts of fraud and repudiation: (*M'Creight* v. *Stevens*, 1 H. & C. 454.)

Where a Company passed a resolution authorising the directors, "if they should think fit," to accept transfers from such shareholders as should give notice of their willingness to surrender their shares, it was held that this was not binding on the Company as an agreement to accept such surrenders; and it was not a good defence to an action against a shareholder for a call that he had, previous to the making of the call, given such notice of surrender of his shares, and that it had not been accepted: (*Shackleford, Ford, and Co.* v. *Dangerfield*, Law Rep. 3 C. P. 407.)

A shareholder in a Company under this act, who has become bankrupt and received his discharge, but retains his shares, cannot plead his bankruptcy as a defence in an action for subsequent calls, whether made while the Company is in operation, or when it is being wound-up, inasmuch as the covenant of the shareholder on becoming a member under sect. 16 of this act to pay the calls on his shares is not "a contract to pay sums of money yearly, or otherwise," within sect. 154, of the Bankruptcy Act, 1861, so as to make the present value of their liability provable under that section; and sect. 75 of this act, which makes it "lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls," only applies where the bankruptcy of the contributory is contemporaneous with the winding-up of the Company: (*Martin's Patent Anchor Company, Limited*, v. *Morton*, *The Same* v. *Hewett*, Law Rep. 3 Q. B. 306.)

See remarks on this case by the Master of the Rolls in *Re General Estates Company, Hastie's case*, Law Rep. 7 Eq. 3

For pleas that the Company was not duly registered, see *Agricultural Cattle Insurance Company* v. *Fitzgerald* (16 Q. B. 432), *London Monetary Advance Company* v. *Smith* (3 H. & N. 543; 27 L. J. Ex. 479), and *London and Provincial Provident Society* v. *Ashton* (12 C. B. N. S. 709, 728). See, also, *Liverpool Borough Bank* v. *Mellor* (3 H. & N. 551; 28 L. J. Ex. 78.)

An agreement that the calls payable by a tradesman who is a shareholder in a Company shall not be payable in cash, but only by set-off for goods supplied by him, is in general *ultra vires*: (*Re Richmond Hill Hotel Company, Pellatt's case*, Law Rep. 2 Ch. App. 527.)

See *Re Masons' Hall Tavern Company, Habershon's case* (Law Rep. 5 Eq. 286), as to a set-off of a debt payable *in futuro* against a call.

See, also, the remarks of the Master of the Rolls in *Calisher's case* (*Re Breech-Loading Armoury Company*, Law Rep. 5 Eq. 214), doubting that a Company has power to contract with one of its members to give him a right to set off debts due from the Company against calls.

By "The Companies Act, 1867," s. 24, a Company may make special arrangements with their shareholders to have some of their shares fully paid up and others not.

Sect. 25 of the same act provides that every share in a Company shall be deemed to have been issued and to be held subject, to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract in writing.

As to interest payable on calls in arrear, under the Articles of Association of a Company, see *Re Blakely Ordnance Company, Stocken's case* (Law Rep. 5 Eq. 6), p. 24, *ante*.

A Company was formed for mining purposes; the prospectus referred to the memorandum and articles, and described in favourable terms a mine for the purchase of which a contract had been entered into. This mine was afterwards found to be worthless, and the directors rescinded the contract, and agreed to purchase another. Wood, V.C., held that a shareholder who had subscribed on the faith of the prospectus was entitled to an injunction against an action for calls, although the directors had been themselves deceived, and had been guilty of no wilful fraud: (*Smith* v. *Reese River Company*, Law Rep. 2 Eq. 264; 12 Jur. N. S. 616; 14 L. T. N. S. 283.)

See, also, *Philips* v. *Ottoman Association*, W. N. 1867, p. 107.

(*b*) *It shall be sufficient to allege.*]—The following form of declaration may be used in an action for calls, or other moneys due to a Company registered under this act:

The Company, Limited, being a Company completely registered according to "The Companies Act, 1862," by their attorney sue .

For that the defendant is a member of the said Company and a holder of shares in the said Company, and is as such member and shareholder indebted to the plaintiffs in £ in respect of a call [*or* calls] of £ [each], made on each of the said shares [and also in respect of other moneys due and payable by the defendant to the plaintiffs for interest on the said call [*or* calls] so due from the defendant to the plaintiffs, and forborne at interest by the plaintiffs to the defendant at his request, *or*, and also in respect of other moneys due and payable by the defendant to the plaintiffs for shares in the said Company, allotted by them to the defendant at his request, *or*, *as the case may be*, *stating the cause in respect of which the other moneys are due*]. And the defendant has not paid the same, whereby an action has accrued to the said Company.

ALTERATION OF FORMS.

71. *Board of Trade may alter forms in schedules.*—The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time(*a*) make such alterations in the tables and forms contained in the first schedule hereto so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite: any such table or form, when altered, shall be published in the *London Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this act, but no alteration made by the Board of Trade in the table marked A. contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

(*a*) *The Board of Trade may from time to time, &c.*]—The Board of Trade have not acted upon the powers given by this section.

ARBITRATIONS.

72. *Power for Companies to refer matters to arbitration.*—Any Company under this act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859,"(*a*) any existing or future difference, question, or other matter whatsoever in dispute between itself and any other Company or person, and the Companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

(*a*) "*The Railway Companies Arbitration Act*, 1859."]—This act (22 & 23 Vict. c. 59) will be found *in extenso*, *post*.

73. *Provisions of* 22 *&* 23 *Vict. c.* 59 *to apply.*—All the provisions of "The Railway Companies Arbitration Act, 1859,"(*a*) shall be deemed to apply to arbitrations between Companies and persons in pursuance of this act; and in

the construction of such provisions "the Companies" shall be deemed to include Companies authorised by this act to refer disputes to arbitration.

(*a*) "*The Railway Companies Arbitration Act*, 1859."—For this act see *post.*

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

PRELIMINARY.

74. *Meaning of contributory.*—The term "contributory"(*a*) shall mean every person liable to contribute to the assets of a Company(*b*) under this act, in the event of the same being wound-up: it shall, also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

(*a*) *The term "contributory."*]—This term seems to have been first introduced by 11 & 12 Vict. c. 45, s. 3.

(*b*) *Liable to contribute to the assets of a Company, &c.*]—Contribution to the assets must be made to an amount sufficient to satisfy the debts and liabilities of the Company, the costs, charges, and expenses of winding it up, and to adjust the rights of the contributories amongst themselves: (sects. 38, 102.)

The persons to make this contribution are termed contributories, and are to be distinguished (sect. 99) into—

1. Persons who are contributories in their own right:
2. Persons who are contributories as being representatives of, or as being liable to, the debts of others.

Contributories in their own right may be divided into—

(*a*) Present members, *i. e.*, persons who at the commencement of the winding-up are members within the meaning of sect. 23, *supra:*

(*b*) Past members who have not ceased to be members for one year previous to the commencement of the winding-up.

As to the respective liabilities of present and past members, see sect. 38, *supra;* and as to the grounds on which they may repudiate their liability, see sects. 22, 23, 35, *supra*, and sect. 98, *infra.*

Representative contributories are—

(*a*) The personal representatives, heirs, and devisees of deceased contributories, as to whom see sect. 76, *infra:*

(*b*) The assignees of bankrupt contributories, as to whom see sect. 77, *infra:*

(*c*) The husbands of female contributories, as to whom see sect. 78. See, also, as to representative contributories, sects. 99, 105, and 106, *infra.*

hough the holders of fully paid-up shares are not liable to contri- to the assets of a Company, yet they are contributories within the ing of the act, so as to be able to present a petition for winding-up r sect. 82, *infra* (*Re National Savings Bank Association*, Law Rep. App. 547): or to require that calls should be made in a winding-up e partly paid-up shareholders, for the purpose of adjusting the rights een themselves and the latter (*Re Anglesea Colliery Company*, Law 1 Ch. App. 555); but the court will not permit a fully paid-up holder to be put on the list of contributories on the ground that as indebted to the Company: (*Re Marlborough Club Company*, Law 5 Eq. 365.)

5. *Nature of liability of contributory.*—The liability of person to contribute to the assets of a Company under act, in the event of the same being wound-up, shall be ned to create a debt (*a*) (in England and Ireland of the ire of a specialty) accruing due from such person at the e when his liability commenced, (*b*) but payable at the e or respective times when calls are made as hereinafter tioned for enforcing such liability; and it shall be lawful he case of the bankruptcy of any contributory to prove inst his estate the estimated value of his liability to future s as well as calls already made.(*c*)

) *Shall be deemed to create a debt.*]—This section makes a call in a ling-up a debt; and it is payable to the liquidator, for, under 95, *infra*, he is the person to take proceedings to recover it.
ct. 102, *infra*, provides for the making of calls where the winding- s compulsory; sect. 133, *infra*, where it is voluntary; and sect. 151, , where it is under the supervision of the court.
notice of a call on a contributory under a voluntary winding-up r the supervision of the court stated, that if the call was not paid ie time appointed, interest would be charged thereon at the rate of r cent. The articles provided for interest on calls. It was held that notice that interest would be charged came within the 28th section & 4 Will. 4, c. 42; and the court ordered the contributory to pay call with interest thereon up to the date of payment: (*Re Overend, ney, and Co., Ex parte Lintott*, Law Rep. 4 Eq. 184; 36 L. J. 510, Ch.; . T. N. S. 228.)
his decision was confirmed by the Court of Appeal in another case, hich the payment of interest, up to the date of the actual payment of call, was held not to have been stopped by payment of the amount ie call into court, to await the decision of a question raised as to the lity of the shareholders: (*Re Overend, Gurney, and Co., Barrow's* , Law Rep. 3 Ch. App. 784.)

) *Accruing due from such person at the time when his liability com- ced, &c.*]—A Company, formed under a deed of settlement, dated ember, 1851, and registered under the Act of the 7 & 8 Vict. c. 110, , in December, 1862, ordered to be wound-up under the provisions of act, under which the Company was registered in January, 1863. official liquidator applied for an adjudication in bankruptcy against a non-trader and shareholder, who joined the Company at its com-

mencement, and executed the deed of settlement, in respect of a c made upon him in August, 1863. It was held that the call was no debt contracted within the 90th section of "The Bankruptcy Act, 186 as under this section the commencement of the liability must be deem to relate back to the date of the deed of settlement, and not to the d of the call: (*Ex parte Canwell, Re Vaughan*, 10 Jur. N. S. 480, Ch., appeal; 10 L. T. N. S. 316.)

See, also, *Williams* v. *Harding*, Law Rep. 1 H. L. 9.

(*c*) *The estimated value of his liability to future calls as well as c already made.*]—It has been held that this provision only applies wh the bankruptcy of the contributory is contemporaneous with the windi up of the Company, and has no application when the bankruptcy been wound-up, the bankrupt discharged, and the assets administe before the winding-up of the Company; therefore the previous ba ruptcy of a shareholder is not a good defence to an action for c in a winding-up: (*Martin's Patent Anchor Company* v. *Morton*, Law R 3 Q. B. 306.)

Blackburn, J., in his judgment in this case, observed: "It would a monstrous injustice that where a man remaining a shareholder, assignees not taking his shares, he should yet be allowed to get ric his liability to pay calls on the ground that he has been a bankr several years before."

The Master of the Rolls, in his judgment in *Hastie's case, Re Gen Estates Company* (Law Rep. 7 Eq. 3), commented on the decision in last case, and held that where a member of a Company has bec bankrupt and obtained his discharge, and his estate has been fi administered by the assignee, he remains liable, in the event of Company being subsequently wound-up, to be made a contributory respect of any of his shares not fully paid up, and is not exonera under this section or sect. 154 of "The Bankruptcy Act, 1861," un the assignee has been substituted for him under sect. 77, *infra*, wh cannot be done without the assignee's consent.

After a bankrupt has been settled upon the list of contributories, liquidators may, in pursuance of this section, prove against his estate the estimated value of future calls in respect of the shares held by l in the Company which is being wound-up, but the court will rese liberty to the assignees to institute an inquiry and call upon the liq dators to show in what way the estimate was arrived at: (*Ex pa Gibbons, Re Clarke*, 11 L. T. N. S. 752, Bank.)

Deeds of Arrangement.

A short time before the winding-up of a Company one of the sha holders executed a deed of arrangement with his creditors under "T Bankruptcy Act, 1861," sect. 192. It was not in the form given Schedule D. of that act, and contained no *cessio bonorum*; it was n therefore, one of those deeds as to which the act provides that the and practice of bankruptcy shall apply, but a special bargain betw the debtor and his creditors with covenants by the creditors that t would not enforce payment of their debts within two years, and by debtor that he would pay in full at the expiration of that period. T debtor was at that time liable for two calls made by the Company, bu did not include them in the schedule sent in to the registrar, and anot call was subsequently made by the official liquidator. It was l (affirming the decision of Wood, V.C., Law Rep. 4 Eq. 566), that omission of the debts from the schedule was not a ground on which

of Chancery could hold the deed to be invalid; that there being quality as between creditors, and no fraud, the court would not of the reasonableness of the arrangement as between the debtor is creditors; and that, so far as related to the calls that were due date of the deed, the official liquidator was bound by the deed. was held (reversing the decision of Wood, V.C.), that, having l to the frame and provisions of the deed, which only applied to actually due, the official liquidator might proceed against the older for the subsequent calls: (*Re Richmond Hill Hotel Company, rte King*, Law Rep. 3 Ch. App. 10.)

ontributory of a Company in course of winding-up who executes d of arrangement must proceed as if the official liquidator had in and asked to have the liability estimated, and must enter him reditor for the estimated amount of all future calls.

Company in course of winding-up was entered as a creditor only call of 5*l.* per share, which had been made. The contributory iable to be called on for 35*l.* per share more, and calls to that at were afterwards made. If the Company who were entered in ed, as non-assenting, had been entered as creditors for this whole at, the non-assenting creditors would have been the majority in The debtor subsequently alleged a set-off against the calls, he had not stated on the application for registration. It was that the Company ought to have been entered as a creditor he estimated amount of the future calls, as well as the calls ly made, being the amount provable in bankruptcy under this n, that the deed therefore was not assented to by the majority ed by "The Bankruptcy Act, 1861," s. 192; and was not binding dissentient creditor: (*Ex parte Pickering, Re Pickering*, Law Rep. App. 58.)

Company in course of liquidation was allowed to set-off against ccepted by them, and in the hands of a contributory, calls due by ontributory who had executed an inspectorship-deed, the effect of was to import the mutual credit clause of "The Bankruptcy Act, " s. 171: (*Re Anglo-Greek Steam Navigation and Trading Company, lli and Haggard's Claim*, Law Rep. 4 Ch. App. 174.)

, also, *Re Duckworth*, Law Rep. 2 Ch. App. 578.

. *Contributories in case of death.*—If any contributory either before or after he has been placed on the list of ributories hereinafter mentioned, his personal repre- atives,(*a*) heirs, and devisees shall be liable in a due se of administration to contribute to the assets of the pany(*b*) in discharge of the liability of such deceased ributory, and such personal representatives, heirs, and sees shall be deemed to be contributories accordingly.(*c*)

His personal representatives, &c.]—The directors of a joint-stock pany offered their reserved shares to shareholders and the executors ceased shareholders, in proportion to the amount of their original s, it was held (reversing the decision of Kindersley, V. C.), that tors who had no power to invest their testator's money in such s, and who accepted shares, must be put upon the list of contribu- in their own right, and not in their representative character.

The fact that the new shares were offered to, and accepted by, the executors in their representative character, and that the directors had no power to offer the shares to them in any other character, did not exempt the executors from being personally liable as between them and the other contributories: (*Re Leeds Banking Company, Fearnside's case and Dobson's case*, Law Rep. 1 Ch. App. 231; 12 Jur. N. S. 60; 13 L. T. N. S. 694.)

See, also, *Re Leeds Banking Company, Mallorie's case* (Law Rep. 2 Ch. App. 181; 36 L. J. Ch. 141; 15 L. T. N. S. 458), p. 85, *ante*, and the observations of the Lords Justices distinguishing it from *Dobson's case*.

See, also, *The Herefordshire Banking Company, Bulmer's case*, 33 Beav. 435.

(*b*) *Devisees shall be liable to contribute to the assets of the Company, &c.*]—Notwithstanding the lapse of several years since the death of a testator, the real estate in the hands of devisees was held liable for the payment of calls: (*Turquand* v. *Kirby*, Law Rep. 4 Eq. 123; 36 L. J. Ch. 570.)

(*c*) *Shall be deemed to be contributories accordingly.*]—But only to the extent of the assets, in the case of personal representatives; and in that of heirs and devisees, to the extent of the interest they take from the deceased member.

77. *Contributories in case of bankruptcy.*—If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt(*a*) for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt,(*b*) or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the Company being wound-up; and for the purposes of this section any person who may have taken the benefit of any act for the relief of insolvent debtors before the eleventh day of October one thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

(*a*) *His assignees shall be deemed to represent such bankrupt.*]—It has been held that the assignees, if they do not elect to take the shares of the bankrupt, cannot be compelled to do so, or be made liable as contributories: (*Re General Estates Company, Hastie's case*, Law Rep. 7 Eq. 3.)

(*b*) *To admit to proof against the estate of such bankrupt, &c.*]—See sect. 75, *supra*, and the cases under it.

78. *Contributories in case of marriage.*—If any female contributory marries,(*a*) either before or after she has been placed on the list of contributories, her husband shall during

continuance of the marriage be liable to contribute to assets of the Company the same sum as she would have liable to contribute if she had not married, and he be deemed to be a contributory accordingly. (*b*)

If any female contributory marries.]—This section does not affect ghts or liabilities of a married woman who has separate estate, and is nothing in the nature of a Joint-Stock Company, in the ce of special provisions on the subject in their regulations, to nt a married woman being a shareholder in her own right, so as id her separate estate.

ere, therefore, a married woman, possessed of separate estate, con- d on her own behalf, to take shares in her own name in a Company was afterwards wound-up, the court, being of opinion that such act was entered into upon the credit of her separate estate, and the regulations of the Company did not exclude married women being shareholders, so as to bind their separate estate, placed her e list of contributories in her own right, so as to bind her separate : (*Re Leeds Banking Company, Mrs. Matthewman's case*, Law Rep. 781; 36 L. J. Ch. 90.)

, also, *Butler* v. *Cumpston* (38 L. J. Ch. 35; W. N. 1868, p. 248), as rustee having a right to be indemnified against calls out of the ate estate of a married woman, for whom he had taken shares in vn name.

He shall be deemed to be a contributory accordingly.]—See *Luard's Re Northumberland and Durham District Banking Company* (1 De & J. 533), where, on marriage, shares belonging to the wife were d to her separate use; but no notice of the marriage was given to Company, and the shares remained in her former name. It was on appeal, that the husband was a contributory, and liable for the

WINDING-UP BY COURT.

. *Circumstances under which Company may be wound-up urt.*—A Company under this act (*a*) may be wound-up ne court (*b*) as hereinafter defined, (*c*) under the follow- ircumstances; (that is to say,)

.) Whenever the Company has passed a special resolution (*d*) requiring the Company to be wound-up by the court:

.) Whenever the Company does not commence its business within a year (*e*) from its incorporation, or suspends its business for the space of a whole year:

.) Whenever the members are reduced in number to less than seven: (*f*)

.) Whenever the Company is unable to pay its debts: (*g*)

.) Whenever the court is of opinion that it is just and equitable (*h*) that the Company should be wound-up.

A Company under this act, &c.]—"The Industrial and Provident

Societies Act, 1862," s. 17, enacts that every society registered under that act may be wound-up by the court or voluntarily, in the same manner as any Company may be wound-up under any act for winding-up Companies. Consequently, any such society may be wound-up under this act. And where a petition was presented to have a friendly and provident society which had done no business since 1844 wound-up under this act, it was held that the society came within the terms of the act: (*Re Alfreton District Friendly and Provident Society*, 7 L. T. N. S. 817, Ch.)

See, also, Parts VI. and VIII. of this act, the former referring to Companies registered under "The Repealed Joint-Stock Companies Acts," the latter to unregistered Companies.

(*b*) *May be wound-up by the court, &c.*]—It is the general right of a creditor to have a Company wound-up by the court, although other creditors to a much larger amount desire a voluntary winding-up, and a meeting of the shareholders has been called to pass a resolution in favour of a voluntary winding-up: (*Re General Rolling Stock Company*, 11 Jur. N. S. 231, Ch; 12 L. T. N. S. 9.) But see the cases under the next section, and on the voluntary winding-up of Companies, sect. 129, *infra*.

(*c*) *As hereinafter defined.*]—For a definition of "the court," see sect. 81, *infra*.

(*d*) *Whenever the Company has passed a special resolution, &c.*]—The manner of passing a special resolution is prescribed by sect 51, *supra*.

(*e*) *Whenever the Company does not commence its business within a year, &c.*]—In the case of *Re Metropolitan Railway Warehousing Company* (W. N. 1867, p. 94), a Company was ordered to be wound-up on this ground, contrary to the wish of the great majority of the shareholders, and it was considered, that the mere depositing of a sum of money with bankers could not be treated as a commencement of business.

(*f*) *Less than seven.*]—As to the liabilities incurred by those who carry on the business of a Company with less than seven members, see sect. 48, *supra*.

(*g*) *Whenever the Company is unable to pay its debts.*]—When a Company shall be deemed unable to pay its debts, is explained by the next section.

Where the creditors of a bank proved their debt, the refusal to pay, and the stoppage of the bank, as all the formalities prescribed by this act (see the next section) had been observed, an order to wind-up was granted as a matter of right: (*Re Consolidated Bank*, W. N. 1866, p. 232.)

(*h*) *Whenever the court is of opinion that it is just and equitable, &c.*]—The words "just and equitable that the Company should be wound-up," used here, are to be considered as referring to matters *ejusdem generis* with the subject matters stated in the four prior rules.

If it be established that a Company never had any proper foundation, and that it was a mere fraud or "bubble Company," the court will order it to be wound-up.

But, the misconduct of the directors and manager of a Company, though it may be such as to render them liable, if a suit were instituted against them by the shareholders, is not a ground on which the court

consider it "just and equitable" to wind-up the Company under section, where there is no evidence that their mismanagement has luced insolvency, or that the Company is a mere "bubble Company," where there is a reasonable prospect that, under proper manage- t, it may be successfully carried on: (*Re Anglo-Greek Steam Naviga- and Trading Company*, 35 Beav. 399; Law Rep. 2 Eq. 1; 12 Jur. S. 323.)

ı *Re Agriculturist Cattle Insurance Company* (1 Mac. & G. 170), where court refused to wind-up an insurance Company, which was carry- on a business of a profitable character, although a considerable ber of shareholders had retired from it. Cottenham, L. C. who ded the case, observed with respect to a clause in the Winding-up 1848 (similar to that above), "This clause was no doubt thus led in order to include all cases not before mentioned; but of course nnot mean that it should be interpreted otherwise than in reference natters *ejusdem generis*, as those in the previous clauses. There must omething in the management and conduct of the Company which vs the court that it should be no longer allowed to continue, and the concern ought to be wound-up."

he articles of a Company adopted an agreement, whereby 240 paid- hares were to be delivered to the manager "for his own use, and rder to supply him with the means for commencing the duties of agement, and for discharging obligations incurred by him in pro- ing the formation of the Company." The petitioner, in reply to an ertisement for a secretary, announcing that he would be required to st 240*l.*, applied for and obtained the appointment, and paid 240*l.* hares in the Company. He then discovered a second agreement, reby the manager had agreed, as soon as he should receive the 240 es, to give to each of the four promoters, who had signed the first ement on behalf of the Company, and who were named directors in articles, forty shares, that being the number of shares necessary for qualification of directors. Only one promoter and director, out of seven promoters (five of whom were named directors) who signed memorandum, six of them for forty shares, and one for ten, had anything in respect of his shares, and there were only six other eholders. Upon petition for winding-up the Company, although ented within three months of the date of incorporation, the court, n the above facts, made the order: (*Re London and County Coal pany*, Law Rep. 3 Eq. 355.)

Vood, V.C., in his judgment, observed: "I think if there had been a *fide* intention on the part of the directors to carry on business in a ber manner, this is a case in which I should not have made an order winding-up, on account of the smallness of the Company, there g only a few members, who, in the ordinary course of things, might e settled their affairs in a more convenient and less expensive ner."

limited Company was established for the acquisition and carrying of hotels, within twenty miles of the General Post Office. Of the shares into which the capital was divided, 3533 had been allotted, only part of the amount due upon them had been called up, the lue due on the allotted shares being sufficient to satisfy the debts of Company, up to the date of the present proceedings, and to leave rge balance available for the prosecution of the business. The pany had never possessed more than one hotel; and this having worked at a loss since its acquisition by the Company, some of the

shareholders desired to have the Company wound-up. A general meeting decided in favour of going on by a very large majority, made up to a considerable extent, but not wholly, of votes in respect of fully paid-up shares which had been allotted to the vendor of the site; but, on the petition of one of the minority, a winding-up order was made by Vice-Chancellor Malins. The Vice-Chancellor's order was reversed, on appeal, by Lord Justice Cairns, who held that the power given to the court by this section to wind-up a limited Company, whenever it is of opinion that it is "just and equitable" so to do, is confined to cases *ejusdem generis* with those mentioned in the previous heads of the section; that is, to what would amount to insolvency, or other incapability of continuing the business of the Company. Where, then, the capital of the Company is not exhausted, and no new state of things has arisen, as compared with what existed at the date of the formation of the Company, the fact that a loss has been hitherto, or even is likely to be hereafter, sustained in the operations of the Company, is not an adequate reason for the exercise of the jurisdiction under this section, and the court has not in time past suffered, and will not suffer, its winding-up process to be used as a means of evoking a judicial decision that the business will, or will not, continue to be an unprofitable mode of employing the capital of the Company. But his Lordship expressed an opinion that if it were shown to the court that the whole substratum of the partnership, and the whole of the business which the Company was incorporated to carry on, had become impossible, the court might, either under the act or on general principles, order the Company to be wound-up: (*Re Suburban Hotel Company*, Law Rep. 2 Ch. App. 737; 36 L. J. Ch. 710; 17 L. T. N. S. 22.)

See, also, *Re Hop and Malt Exchange Company*, W. N. 1866, p. 222.

Where it appears just and equitable, the court under this section has power to order a Company to be wound-up, notwithstanding such winding-up is contrary to the wishes of a majority of the shareholders: (*Re British Oil and Cannel Company*, 15 L. T. N. S. 601, Ch.)

See, also, *Re Factage Parisien*, 13 W. R. 214, 330; and *Re West Surrey Tanning Company*, Law Rep. 2 Eq. 737.

But the court will not, in the absence of fraud, make an order under this clause for a compulsory winding-up on the petition of shareholders, against the wish of a large majority of the creditors and contributories, but will leave the Company to exercise their judgment in determining on a voluntary winding-up: (*Re London Flour Company*, W. N. 1868, p. 84; 16 W. R. 552.)

See sects. 82 and 86, *infra*, for decisions of the court on winding-up petitions.

80. *Company when deemed unable to pay its debts.*—A Company under this act shall be deemed to be unable to pay its debts—

(1.) Whenever a creditor, by assignment or otherwise, to whom the Company is indebted, at law or in equity, in a sum exceeding fifty pounds then due,(*a*) has served on the Company, by leaving the same at their registered office,(*b*) a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks

succeeding the service of such demand neglected to pay such sum,(*c*) or to secure or compound for the same to the reasonable satisfaction of the creditor:

2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the Company, is returned unsatisfied in whole or in part:(*d*)

3.) Whenever, in Scotland, the *inducicæ* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made:

4.) Whenever it is proved to the satisfaction of the court that the Company is unable to pay its debts.

a) *In a sum exceeding fifty pounds then due, &c.*]—The provisions of and the last section for winding-up a Company, in default of its ing a debt three weeks after notice, do not apply where there is a *i fide* dispute as to the amount due, though there may be an nitted debt exceeding 50*l.*: (*Re Brighton Club and Norfolk Hotel npany*, 35 Beav. 204.)

When there is clear proof that a debt upon which a winding-up order ought is valid at law and in equity, the court will ordinarily make order; but where the debt is impeached the court will exercise its retion: (*Bowes* v. *The Hope Mutual Life Insurance and Honesty rantee Society*, 11 Jur. N. S. 643, H. L.; 12 L. T. Rep. N. S. 680. d Cranworth.) See sect. 86 of this act.

ee, also, *Rhydydefed Colliery Company, Ex parte* and *Re*, 3 De G. & J. 80.)

. debt which had been attached in the Lord Mayor's Court was held sufficient to support a petition for winding-up: (*Re the European k, Ex parte Baylis*, Law Rep. 2 Eq. 521; 35 L. J. Ch. 690; 12 Jur. S. 615.)

n a petition, to wind-up a Company, by a debenture-holder, where Company admitted the validity of the debenture, but contended the interest was only payable out of profits, the court took n itself to decide the dispute at the hearing of the petition, and le the winding-up order without waiting until the debt had been blished at law: (*Re Imperial Silver Quarries Company*, 16 W. R. 1220.)

b) *By leaving the same at their registered office, &c.*]—A demand, er this section, may be made by a creditor for the payment of debt at a Company's unregistered office where the Company has no stered office: (*Re the British and Foreign Gas Generating Apparatus npany*, 11 Jur. N. S. 559, Ch.; 12 L. T. N. S. 368.)

c) *And the Company has, for the space of three weeks, neglected to such sum, &c.*]—An order for winding-up a Company, on the lication of a creditor, on the ground that the Company has not d the petitioner his debt, within twenty-one days after notice uiring payment (under this section), will not be made, unless the nty-one days have elapsed before the petition is presented. Per the d Justice Turner.—Attempts to enforce by means of a winding-up

petition, the payment of a debt, the liability to which is *bonâ fide* disputed by the Company, are not to be encouraged, and it seems that in such a case, a petition ought to be ordered (under sect. 86 of this act) to stand over till the debt is established: (*Re Catholic Publishing and Bookselling Company*, 2 De G. J. & S. 116, on appeal.)

The fact of a Company having neglected to pay a debt three weeks after demand made, under this section, is not sufficient to entitle the creditor to a winding-up order, unless it be shown that the Company is also unable to pay its debts.

Where a debt is disputed by a Company, a petition by the creditor to wind it up will not be allowed to stand over, unless it is believed that if the debt had been established by a judgment, such judgment could not be enforced against the Company: (*Re London Wharfing and Warehousing Company*, 35 Beav. 37.)

See, also, *Cardiff Preserved Coal, &c., Company* v. *Norton*, Law Rep. 2 Ch. App. 405.

(*d*) *Unsatisfied in whole or in part.*]—Under this clause, when judgment has been obtained, the amount of the debt is immaterial: (*Re London and Birmingham Flint Glass and Alkali Company, Ex parte Wright*, 1 De G. F. & J. 257; 28 L. J. Bank. 17.)

81. *Definition of "the court."*—The expression "the court," as used in this part of this act,(*a*) shall mean the following authorities; (that is to say,)

In the case of a Company engaged in working any mine(*b*) within and subject to the jurisdiction of the Stannaries, —the court of the vice-warden of the Stannaries, unless the vice-warden certifies that in his opinion the Company would be more advantageously wound-up in the High Court of Chancery, in which case "the court" shall mean the High Court of Chancery:

In the case of a Company registered in England that is not engaged in working any such mine as aforesaid,— the High Court of Chancery:

In the case of a Company registered in Ireland, the Court of Chancery in Ireland:

In all cases of Companies registered in Scotland, the Court of Session in either division thereof:

Provided that where the Court of Chancery in England or Ireland makes an order for winding-up a Company under this act, it may, if it thinks fit, direct all subsequent proceedings for winding-up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the Company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the purposes of winding-up the Company, be deemed to be "the court," within the meaning of the act, and shall have for the purposes of such winding-up all the powers(*c*) of the

igh Court of Chancery, or of the Court of Chancery in eland, as the case may require.

(*a*) *The expression "the court," as used in this part of this act, &c.*]—e Court of Chancery may now refer the proceedings for winding-up Company to a County Court, and thereupon such County Court shall, the purpose of winding-up the Company, be deemed to be "the urt" within the meaning of this act. See "The Companies Act, 57," s. 41, *post.*

(*b*) *In the case of a Company engaged in working any mine, &c.*]—The t of the stannary jurisdiction under this section is not "actual work-;," but the object for which the Company is framed. A Company s formed for the purpose of purchasing and working a mine in rnwall, and was registered under this act in the registry office of Stannaries Court, but its registered office was in London, and it ver commenced business. It was held to be a Company "engaged working" a mine within the meaning of this section, and that the isdiction to wind it up was in the Stannaries Court, and not in Court of Chancery: (*Re the East Botallack Consolidated Mining mpany*, 34 Beav. 82; 34 L. J. Ch. 81; 10 Jur. N. S. 1193; 11 L. T. S. 408.)

When a Company has been established for working mines within the trict of the Stannaries, the fact that some of the objects of the mpany are to be carried out beyond the district, does not exempt the mpany from the jurisdiction of the Stannaries Court: (*Re Penhale d Lomax Consolidated Silver Lead Mining Company*, Law Rep. 2 Ch. p. 398; 36 L. J. Ch. 515; 16 L. T. N. S. 336.)

(*c*) *All the powers, &c.*]—Where the Court of Chancery had directed ther proceedings to be taken in a Court of Bankruptcy, that court s held to have jurisdiction to commit persons disobeying its orders: *x parte Hirtzell*, 30 L. J. Ch. 38.)

82. *Application for winding-up to be made by petition.*—ıy application to the court(*a*) for the winding-up of a mpany under this act shall be by petition;(*b*) it may presented by the Company, or by any one or more editor or creditors,(*c*) contributory or contributories of e Company,(*d*) or by all or any of the above parties, gether or separately;(*e*) and every order which may be ıde(*f*) on any such petition shall operate in favour of all e creditors and all the contributories of the Company in e same manner as if it had been made upon the joint tition of a creditor and a contributory.

(*a*) *Any application to the court, &c.*]—The preceding section gives a inition of "the court."

(*b*) *By petition.*]—A petition to wind-up a Company must be intituled the matter of "The Companies Acts, 1862 and 1867," and of the mpany to which such petition shall relate, describing the Company its most usual style or firm. As to the practice of the Court of ancery with regard to such petitions, see General Orders and Rules November, 1862, and of March, 1868, *post.*

A petition for winding-up a Company should not also pray for the appointment of a particular person as official liquidator. The court has power to appoint one at the hearing of the petition if the parties consent; otherwise the matter must be settled in chambers: (*Re the Commercial Discount Company*, 7 L. T. N. S. 816, Ch.)

The petitioner's costs are the first charge upon the Company's property in a winding-up, and must be paid in full, in priority to the costs of the official liquidator: (*Re Audley Hall Spinning Company*, Law Rep. 6 Eq. 245.)

(*c*) *By any one or more creditor or creditors.*]—A creditor who comes within the terms of this act (see sects. 79, 80) is entitled to a winding-up order as of right: (*Re Consolidated Bank*, W. N. 1866, p. 232.)

Where creditors presented a petition for winding-up a Company, and before the petition came on to be heard the chairman of the Company inserted an advertisement in the daily papers, accusing the petitioners of corrupt motives, the court refused to commit, but required an undertaking not to repeat the advertisement: (*Re the General Exchange Bank*, 12 Jur. N. S. 465, Ch.; 14 L. T. N. S. 582.)

(*d*) *Contributory or contributories of the Company, &c.*]—For a definition of contributory, see sect. 74, *supra*.

The right of a contributory of a Company to present a petition for winding-up has now certain limitations placed upon it by "The Companies Act, 1867," s. 40, *post*. That section enacts that no contributory shall be qualified to present a winding-up petition unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he claims to be a contributory, either were originally allotted to, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder. Provided that where a share has, during the whole or any part of the six months, been held by, or registered in the name of, the wife of a contributory, either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the contributory, such share shall, for the purposes of that section, be deemed to have been held by and registered in the name of the contributory.

The holder of fully paid-up shares is a contributory within the meaning of this act, and is entitled in that character to present a petition to wind-up the Company: (*Re National Savings Bank Association*, Law Rep. 1 Ch. App. 547; 12 Jur. N. S. Ch. 697); but he must show special circumstances to entitle him to an order for winding-up: (*Re the Patent Artificial Stone Company*, 11 Jur. N. S. Ch. 4; 11 L. T. N. S. 561.)

See, also, *Re the London Armoury Company*, 11 Jur. N. S. Ch. 963.

In another case it was held that, to obtain a winding-up order, the holder of paid-up shares must satisfy the court, that the Company has ceased to carry on its business, and that the assets of the Company are sufficient, after payment of the debts of the Company, to produce a surplus for division among the shareholders: (*Re the Lancashire Brick and Tile Company*, 34 L. J. Ch. 331; 11 Jur. N. S. 405.)

A petition for winding-up, presented by persons who had merely acquired an interest in the Company for the purpose of presenting it, was not held to be irregular: (*Re Cheshire Patent Salt Company*, 9 Jur. N. S. 1098.) But see, now, "The Companies Act, 1867," s. 40, *post*.

Where the transferee of scrip certificates transferable by delivery,

which entitled the holder to become a shareholder in respect of the shares therein mentioned, and in the mean time to receive dividends, petitioned for the winding-up of the Company, a winding-up order was made on his petition, the petitioner admitting himself to be a contributory, and undertaking to do all acts necessary to make himself a shareholder: (*Re the Littlehampton, Havre, and Honfleur Steam Ship Company*, 2 De G. J. & S. 521, on appeal.)

Where the original inventor and owner of a patent sold it to a Company for a certain number of fully paid-up shares in the Company, and was moreover paid all other claims which he had against the Company, it was held that a petition presented by him for a winding-up order must be dismissed with costs: (*Re the Patent Bread Machinery Company*, 14 L. T. N. S. 582, Ch.)

As to shareholders petitioning for a compulsory winding-up, after a resolution passed to wind-up voluntarily, see *Re London Flour Company* W. N. 1868, p. 84; 16 W. R. 552), where the Court of Appeal expressed strong disapproval of the proceedings of the petitioners, who were seeking an order for a compulsory winding-up, in opposition to a large majority of shareholders and creditors, in place of having brought forward their arguments at a meeting of shareholders. The petition was dismissed with costs.

A petition by a shareholder to wind-up a Company within a year of its incorporation, on the ground of its being a bubble scheme of underhand dealings, and that "it ought not to be allowed to continue," was granted: (*Re London and County Coal Company*, Law. Rep. 3 Eq. 355.)

Where a winding-up order has been made on the petition of a shareholder, who is afterwards made a contributory, and is a debtor to the Company in respect of calls, he is entitled to the costs of the petition, the hearing in court and the order, without having the amount of the calls set off against such costs: (*Re General Exchange Bank*, Law Rep. 2 Eq. 138; 16 L. T. N. S. 338.)

(*e*) *By all or any of the above parties, together or separately.*]—Where several petitions are presented for winding-up the same Company, and an order has been made upon one of them, each of the subsequent petitions will be treated individually upon its own merits, as if it were the only one presented, and to entitle the petitioner to costs, must disclose such facts as would induce the court to make a winding-up order, if no other petition had been presented: (*Re the European Banking Company, Ex parte Baylis*, Law Rep. 2 Eq. 521; 35 L. J. Ch. 690; 2 Jur. N. S. 615.)

The petitioner in this case was a creditor of a banking Company for only 65*l*., and it appeared that, before his petition was presented, an action had been brought against him by one of his creditors in the Lord Mayor's Court, under which this debt, which was assumed to be due to him from the bank, had been attached; under these circumstances, the court held, that it would not have made an order upon the petition to wind-up the Company, on the ground that the interest of the petitioner as a creditor was too uncertain in its character. The petition was, therefore, dismissed with costs.

Where a creditor presented a petition for winding-up a Company the day after a similar petition by another creditor had been advertised in the public papers, and five days after the same petition had been announced in the *Gazette*, it was held that, as the second petitioner

had presented his petition so soon after the advertisement of the prior petition, it must be assumed, in the absence of evidence to the contrary, that he had no notice of its presentation, and was, therefore, entitled to his costs.

Where directors, after a resolution, presented a petition for winding-up a Company, with full notice of prior petitions having been presented by creditors and contributories for the same purpose, the court refused to allow them their costs.

And it seems a creditor who presents a winding-up petition after due notice of a prior petition having been presented by another creditor for the same object will not be allowed his costs: (*Re Empire Assurance Corporation*, 16 L. T. N. S. 341, Ch.)

See, also, *Re Accidental and Marine Insurance Company, Ex parte Rasch*, 36 L. J. Ch. 75; 15 L. T. N. S. 173.

There being two concurrent petitions for winding-up a Company, and the one presented last coming on to be heard first, an application for the transfer of the latter to the same court as that in which the former was presented was refused; but upon the hearing of the first presented petition, which had been transferred to the same court as the second petition, an order was made directing payment of the costs of the first petition out of the assets of the Company: (*Re British and Foreign Gas Generating Apparatus Company*, 11 Jur. N. S. 559, Ch.; 12 L. T. N. S. 368.)

With regard generally to the costs of a petitioner to wind-up a Company, see sect. 86, *infra*.

(*f*) *Every order which may be made.*]—The court has a discretion as to the order to be made on any winding-up petition. See sects. 86 and 91, *infra*: (*Re Brighton Hotel Company*, W. N. 1868, p. 196.)

83. *Power of court.*—Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorised to do; and the vice-warden of the Stannaries may direct that a petition for winding-up a Company be heard by him at such time and at such place within the jurisdiction of the Stannaries, or within or near to the place where the registered office of the Company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England; and all orders made thereupon shall have the same force and effect as if they had been made by the vice-warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the vice-warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court; and the registrar of the court may, subject to exception or appeal to the vice-warden as heretofore used, do and exercise such and the like acts and powers in the matter of

winding-up as he is now used to do and exercise in a suit in the equity side of the said court.

84. *Commencement of winding-up by court.*—A winding-up of a Company by the court shall be deemed to commence(*a*) at the time of the presentation of the petition for the winding-up.

(*a*) *Shall be deemed to commence, &c.*]—By sect. 153 of this act all dispositions of the property, and every transfer of shares or alteration in the status of the members of a Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void.

An agreement for the sale of shares entered into after a petition for winding-up the Company has been presented, and in ignorance of the act, is not enforcible or valid in equity, and the purchaser will not be made a contributory (*Re London, Hamburg, and Continental Exchange Bank, Emmerson's case*, Law Rep. 1 Ch. App. 433). In this case the agreement was entered into before the petition had been advertised (as required by clause 2 of the General Order of November, 1862), and of course before any order to wind-up the Company had been made.

See *Chapman* v. *Shepherd* (Law Rep. 2 C. P. 228), as to the usage of the Stock Exchange with regard to a contract for the sale of shares not completed before the presentation of a petition to wind-up the Company.

A shareholder cannot be relieved from shares in a Company, upon the ground of misrepresentation in the prospectus, on a bill in equity filed after the presentation of a petition for winding-up, on which an order has subsequently made: (*Kent* v. *Freehold Land and Brickmaking Company*, Law Rep. 3 Ch. App. 493.)

Although the directors of a Company have no control over its affairs after the winding-up is commenced, yet it has been held that they do not then cease to be officers of the Company, and are therefore bound to answer interrogatories under sect. 51 of "The Common Law Procedure Act, 1854" (17 & 18 Vict. c. 125): (*The Madrid Bank, Limited, Bayley*, Law Rep. 2 Q. B. 37.)

85. *Court may grant injunction.*—The court may, at any time after the presentation of a petition (*a*) for winding-up a Company under this act, and before making an order for winding-up the Company upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any action, (*b*) suit, or proceeding against the Company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator (*c*) of the estate and effects of the Company.

(*a*) *At any time after the presentation of a petition, &c.*]—In connection with this section, see sects. 87 and 163, *infra*.

(*b*) *Restrain further proceedings in any action, &c.*]—After a petition

has been presented for the winding-up of a Company, the court has jurisdiction under this section to restrain the sale by the sheriff of property of the Company, seized under a writ of *fi. fa.* before the presentation of the petition: (*Re Hill Pottery Company*, Law Rep. 1 Eq. 649.)

In this case, on the execution-creditor giving up the execution, the court declared him to be entitled to a first charge on the property seized for the amount of his debt and costs. As to the division of the moneys produced by the subsequent sale of the goods between the creditor and official liquidator, see *Re Hill Pottery Company* (W. N. 1866, p. 339).

See, also, *Re Plas-yn-Mhowys Coal Company* (Law Rep. 4 Eq. 689), *post*, in which the case of *Re Hill Pottery Company* was followed. A form of the order will be found in the report (Law Rep. 4 Eq. 691).

But see *Re Bastow and Company*, Law Rep. 4 Eq. 681.

Although the court may have jurisdiction under this section to restrain a sale under an execution, yet the Lords Justices have clearly dissented from the view that in using the discretion so given, the court is to be influenced by the supposition, that the object of the act is to protect the body of creditors from inequality in the division of assets, arising from priority having been gained by a diligent creditor. In the case of *Re Great Ship Company, Ex parte Parry* (33 L. J. Ch. 245; 3 N. R. 181; 12 W. R. 139), where the Court of Appeal permitted a creditor, who obtained judgment against a Company and issued execution *bonâ fide* before the presentation of a petition, to realise his judgment, Turner, L.J., observed: "In my opinion the court, in dealing with a question thus dependent on its discretion, is bound to look to the legal rights of the parties, and to the interests not of one class of creditors only, but of each particular class of creditors who may be affected by the decision at which it shall arrive. I think that there is nothing in this Act of Parliament which gives to the general creditors of the Company any right to have their interests consulted in preference to the interests of the particular creditor whose case may come before the court. I think it is the duty of the court to hold an even hand between the interests of all the parties, and I take this section [sect. 201, *infra*, similar to this, but applicable to unregistered Companies] to have been introduced into the act very much with a view to meet cases in which there might have been unfair proceedings on the part of the creditor, who is seeking to enforce those proceedings against the assets of the Company. Above all, I think it would be the bounden duty of the court, in considering the question as to the exercise of its discretion, to see what would be the duty, or might probably be the duty, of the court if the order to wind-up had been actually made, and an application had been made to the court by the creditor for leave to issue execution."

The views thus expressed were adopted by Vice-Chancellor Wood, in *Re London Cotton Company* (Law Rep. 2 Eq. 53), and by Vice-Chancellor Malins, in *Re Bastow and Company* (Law Rep. 4 Eq. 681); in the latter case the court alluded to the fact that the order to wind-up had been obtained on the petition of the Company itself, its directors and contributories, and not on the application of any creditor.

See *Re London Cotton Company* (Law Rep. 2 Eq. 53), *post*, for the circumstances under which the court dissolved an injunction, granted *ex parte* under this section, to restrain a creditor from putting in force an execution, and used the power given it by sect. 87, *infra*, to give him leave to put the execution in force.

As to the right of the Crown to extend the property of a Company
ding the hearing of a winding-up petition, see *Re English Joint-
ck Bank* (W. N. 1866, p. 199).

c) Appoint provisionally an official liquidator, &c.]—The Master of
Rolls thus stated his practice with reference to the appointment of
visional liquidators: "Where there is no opposition to the winding-
I appoint a provisional liquidator as a matter of course, on the
sentation of the petition; but where there is an opposition to it, I
er do, because I might paralyse all the affairs of the Company, and
erwards refuse to make the winding-up order at all. But where the
ectors themselves apply, or do not oppose the winding-up, then I
oint the provisional liquidator": (*Re London, Hamburg, and Con-
ental Exchange Bank, Emmerson's case*, Law Rep. 2 Eq. 236.)
See, also, *Re Railway Finance Company*, 14 L. T. N. S. 507, Ch.
In the case of *Re Cilfoden Benefit Building Society* (Law Rep. 3 Ch.
p. 462), the Court of Chancery Appeal considered that the rule laid
wn by the Master of the Rolls in *Emmerson's case* was the proper one,
I declined to make an order in opposition to it.
Malins, V.C., appointed an interim provisional liquidator, on the
dertaking of such liquidator to give security, and on the undertaking
the petitioner to be responsible for moneys, &c., received by such
uidator: (*Re Marseilles Extension Railway and Land Company*, W. N.
67, p. 68.)
See, also, *Re West Worthing Waterworks, Baths, and Assembly Rooms
mpany*, 18 L. T. N. S. 849.
It would seem that a provisional official liquidator, being in the position
a receiver appointed *pendente lite*, is not entitled to appear at the
aring of a winding-up petition, and if he does appear will not be
owed his costs: (*Re General International Agency Company*, 5 N. R.
5; 34 L. J. Ch. 337.)

86. *Course to be pursued by court on hearing petition.*—
pon hearing the petition(*a*) the court may dismiss the
me(*b*) with or without costs,(*c*) may adjourn the hearing
nditionally or unconditionally,(*d*) and may make any
erim order, or any other order that it deems just.(*e*)

(a) Upon hearing the petition.]—The court has in all cases a wide
cretion as to the course it will take on hearing a petition to wind-up
Company, and by sects. 91 and 149, *infra*, is empowered to take steps
ascertain the wishes of creditors or contributories, and to have regard
those wishes. The circumstances under which the court shall have
wer to order a winding-up are set forth in sects. 79 and 80, *supra;*
t it rests with the court to exercise that discretion or not: (*Re
tropolitan Saloon Omnibus Company, Ex parte Hawkins*, 5 Jur. N. S.
2.)
The court will not, upon the hearing of a petition to wind-up a
mpany, enter into a contest as to the person to be appointed official
uidator, and it will not appoint one, on that occasion, unless with
concurrence of all parties: (*Re the Commercial Discount Company*,
Beav. 198.)
When a winding-up petition has been advertised (as required by the
neral Order of 1862), the Company and shareholders interested are

justified in taking steps to oppose the petition, although they have not been served with it: (*Re Marlborough Club Company*, Law Rep. 1 Eq. 216.)

(*b*) *The court may dismiss the same, &c.*]—By sect. 82, *supra*, a petition to wind-up may be presented by the Company, by a creditor or creditors, and by a contributory or contributories; a petition, presented by a person not coming within one of these denominations, cannot obtain an order. Where, therefore, the original inventor and owner of a patent, sold it to a Company for a certain number of fully paid-up shares in the Company, and was, moreover, paid all other claims which he had against the Company, it was held that a petition presented by him for a winding-up order must be dismissed with costs. It appeared, further, by the Articles of Association of the Company, and the agreement for the sale of the patent to them, that if the Company was ordered to be wound-up, the patent was to revert to the petitioner. It appeared, also, that the Company was formed for two distinct purposes, one of which had failed; but that the shareholders and execution-creditors were anxious to continue the other, which they believed would be successful. It was held that that was not a case in which the court would make a winding-up order: (*Re Patent Bread Machinery Company*, 14 L. T. N. S. 582, Ch.)

If the petition does not come within the terms of sects. 79 and 80, *supra*, it will be dismissed.

In the following cases petitions presented by creditors were dismissed: *Re Catholic Publishing and Bookselling Company* (2 De G. J. & S. 116), on the ground that the requisitions of sect. 80, *supra*, were not complied with: *Re European Banking Company, Ex parte Baylis* (Law Rep. 2 Eq. 521), where the petitioners' debt was small, and attached in the Lord Mayor's Court for a debt of his own: *Re Brighton Club and Norfolk Hotel Company* (11 Jur. N. S. 436, Ch.; 12 L. T. N. S. 484), where the court refused to make a winding-up order upon the petition of a creditor whose debt was *bonâ fide* contested, although it was manifest that, upon taking the accounts, more than 50*l.* would be found due to him.

See, also, *Re London Wharfing and Warehousing Company* (35 Beav. 37), and *Re Hope Mutual Life Assurance Company* (1 N. R. 542; 11 Ho. Lords Cas. 389), both cases decided on the ground of the debt being disputed.

The following were cases of petitions presented by shareholders.

Where a Company, having power to buy up other concerns, agreed to amalgamate with another Company, and a shareholder in the former Company, who objected to the amalgamation, presented a petition praying for an order to wind it up, alleging that it had ceased to carry on business; but really desiring, by means of the winding-up order, to ascertain his exact position in the concern, it was held that the case was not one for a winding-up order within the act, and that the petitioner ought to file a bill in equity to have his rights determined: (*Re National Financial Corporation*, 14 L. T. N. S. 749, Ch.; W. N. 1866, p. 243.)

See, also, as regards amalgamated Companies, *Re Anglo-Australian Assurance Company* (1 Drew. & Sm. 113), and *London, Newbury, and Bath Direct Railway Company, Ex parte Cookson* (15 Jur. 615).

It was held that the provisions of the act as to winding-up orders are not intended to apply to cases where there is a very small body of share-

lders, and no difficulties exist in the way of voluntary winding-up: *e Natal &c., Company*, 1 H. & M. 639.)

Acting on this principle with regard to a Company where there were ly seven shareholders, and no debts, the court dismissed a winding-up tition with costs: (*Re Sea and River Marine Insurance Company*, Law p. 2 Eq. 545; 35 L. J. 820, Ch.; 12 Jur. N. S. 779.)

In *Re Bwleh-y-Plwm Company* (17 L. T. N. S. 235), a shareholder's tition was dismissed (although without costs), which had been pre-ıted on the ground, that moneys and paid-up shares had been given to rsons, to induce them to become directors of the Company.

Where a shareholder presented a petition to wind-up a Company, thin twelve months after its incorporation, on the ground that in the ən state of the money market it was hopeless that any more of the mpany's shares would be subscribed for, and that under the circum-ınces the Company was without the power of carrying out its objects, ə petition was dismissed with costs: (*Re Hop and Malt Exchange mpany*, W. N. 1866, p. 222.)

In the case of *Re Suburban Hotel Company* (Law Rep. 2 Ch. App. 737), ıhareholder's petition alleging, that the Company's business had been ıpended for more than twelve months (which, however, was not ɔved), that it had been carried on at a loss, and could not be carried at a profit, was dismissed, with costs. It appeared that a large ıjority of shareholders were in favour of carrying on the business, and ch being the case, the court would not, on opinion evidence, pronounce at the concern was likely to be an unprofitable speculation.

A similar order was made in *Re Joint-Stock Coal Company* (W. N. 69, p. 82), in which the petitions were grounded on the fact of the ncern having been carried on at a loss, although it was not alleged at the Company was insolvent.

But see *Re Great Northern Copper Mining Company of Australia* (17 . R. 462), where an order was made against the wishes of a majority shareholders.

The petition was also dismissed in *Re Factage Parisien Company* (11 ır. N. S. 121), where the business had been carried on at a loss, but omised ultimately to become prosperous, and the majority of share-ılders were in favour of going on; *Re Metropolitan Saloon Omnibus mpany* (5 Jur. N. S. 922), where the circumstances were similar to ose in the case just mentioned, and the petitioner was the nominee of rival Company; *Re Anglo-Greek Steam Company* (Law Rep. 2 Eq. 1), 153, *ante*, in which the ground of the petition was the misconduct the directors and manager.

See, also, *Re Wexford and Valencia Railway Company, Ex parte Fisher*, De G. &. S. 116); *Re Narborough and Watlington Railway Company, x parte James*, 1 Sim. N. S. 140; *Re National and Provincial Live Stock surance Company*, 26 Beav. 153; *Re Wheal Lorell Mining Company, x parte Wyld*, 1 Mac. & G. 1; *Re Agriculturists' Cattle Insurance Com-ny, Ex parte Spackman*, 1 Mac. & G. 170, *ante*.

Where a Company is being wound-up voluntarily the court will smiss a contributory's petition for a compulsory winding-up, unless e resolution for winding-up voluntarily can be successfully impeached, other strong grounds be shown. On this point see *Re Bank of ibraltar and Malta*, Law Rep. 1 Ch. App. 69; *Re London and Mercantile iscount Company*, Law Rep. 1 Eq. 277; *Re Imperial Mercantile Credit ssociation, Ex parte Coleman and others*, W. N. 1866, p. 257; *St. David's old Mining Company*, W. N. 1866, p. 196; *Re General International*

Agency Company, 5 N. R. 265; *Re Union Bank of Calcutta, Ex parte Watson*, 3 De G. & S. 253; *Re British Alkali Company, Ex parte Guest*, 5 De G. & S. 458; *Re London Conveyance Company, Ex parte Wise*, 1 Drew. 465.

As to the court refusing to make a winding-up order which would be useless when made, see *Re London and South Essex Railway Company, Ex parte Murrell*, 3 De G. & S. 4; *Re Great Munster Railway Company, Ex parte Inderwick*, 3 De G. & S. 231; *Re Chester and Manchester Direct Railway Company, Ex parte Phillips*, 1 Sim. N. S. 605.

(*c*) *With or without costs.*]—The Master of the Rolls held, that where a petition to wind-up a Company is dismissed, the petitioner will, as a general rule, be ordered to pay the costs of the Company opposing the petition, and of every person against whom a personal charge is made by the petition, and who appears and disproves such charge, and is otherwise free from blame; but no other person appearing, either to support or oppose the petition, will be allowed any costs. But where the winding-up order is made, the petitioner and the Company will have their costs out of the estate, and shareholders and creditors who appear to support the petition will have out of the estate one set of costs between them: (*Re Humber Ironworks Company*, 35 Beav. 346; Law Rep. 2 Eq. 15; 12 Jur. N. S. 265; 14 L. T. N. S. 216.)

The view taken by the Master of the Rolls in the last case, as to the costs of shareholders and creditors who appear at the hearing of a petition which is dismissed, was dissented from by Kindersley, V.C., who held that the rule, that where a petition for winding-up succeeds, shareholders who oppose will have one set of costs, and creditors who oppose another set of costs, applies equally to the case where the petition fails and the shareholders or creditors oppose: (*Re European Bank, Ex parte Baylis*, Law Rep. 2 Eq. 521; 35 L. J. Ch. 690; 12 Jur. N. S. 615.)

In *Re London Permanent Benefit Building Society* (17 W. R. 513), Malins, V.C., allowed the costs of creditors, who appeared and successfully opposed a shareholder's petition.

It was held by Kindersley, V.C., that the advertisement of a winding-up petition, under the orders of 1862, is of itself sufficient notice of such petition, to justify the Company and shareholders who are interested in such Company, in appearing on the petition, and if they are successful in opposing it, they are entitled to their costs, although they may not have been served with the petition.

And in a case where a Company and shareholders, though not served, appeared on a petition, after notice that it was intended to be withdrawn, they were held entitled to costs incurred by them before they had notice of such intended withdrawal: (*Re Marlborough Club Company*, Law Rep. 1 Eq. 216.)

See, however, *Re Oriental Commercial Bank* (W. N. 1866, p. 283), where Wood, V.C., having made a winding-up order, gave costs only to the parties who had been served with the petition. His Lordship adopted the same rule in *Re Hop and Malt Exchange Company* (W. N. 1866, p. 222), where the petition was dismissed. See, also, *Re Imperial Mercantile Credit Association, Ex parte Coleman and others* (W. N. 1866, p. 257.)

See, also, *Re Bwlch y Plwm Company*, 17 L. T. N. S. 235.

A petition for winding-up having been presented, on the ground of the misconduct of the directors and manager of a Company (see sect. 79, cl. 5, *supra*), the Master of the Rolls, in dismissing it, held that where shareholders appear to resist a petition for winding-up a Company,

ey do so at their own costs; but where the petition contains a rsonal charge against any director or any member of the Company, e director or member so assailed is entitled to appear separately, and the case against him fails, he is entitled to his costs: (*Re Anglo-Greek eam Company*, Law Rep. 2 Eq. 1; 12 Jur. N. S. 323.)

See, also, *Re Albion Bank* (15 L. T. N. S. 346; W. N. 1866, p. 388).

Where a petition of appeal, presented by a Company to discharge a nding-up order, was dismissed, the form of the order was to direct e costs of the respondents to come out of the estate, and make no der as to the costs of the Company: (*Re National Savings Bank Asso-tion*, Law Rep. 1 Ch. App. 547; 35 L. J. Ch. 808.)

A person who appears to support a petition that is dismissed, or to pose one that succeeds, will not be entitled to costs, see *Re London d Mediterranean Bank*, W. N. 1866, p. 207.

Where several petitions are presented for winding-up the same Com-ny, and an order has been made upon one of them, each of the sub-quent petitions will be treated individually as if it were the only one esented, and, to entitle the petitioner to costs, must disclose such facts would induce the court to make a winding-up order, if no other tition had been presented: (*Re European Bank, Ex parte Baylis*, w Rep. 2 Eq. 521; 35 L. J. Ch. 690; 12 Jur. N. S. 615.)

(*d*) *May adjourn the hearing conditionally or unconditionally.*]—Where Company was in course of voluntary winding-up, and a person claim-g to be a creditor, but whose debt was disputed by the Company, titioned for an order to wind-up the Company, and it was admitted at there were sufficient assets, it was held that the debt being *bonâ e* disputed, the proper course for the creditor was to establish his bt at law; and then, if he could not get paid, to come to the court r a winding-up order. But the official liquidator having refused to cept service for the Company in an action which the creditor had mmenced, the court ordered the petition to stand over to await the sult of the action at law: (*Re Inventors' Association*, 2 Drew. & S. 3.)

See, also, *Re Rhydydefed Colliery Company*, 3 De G. & J. 80.

The only creditor of a Compauy, which had ceased to carry on siness, recovered judgment against the Company, upon which execu-n was issued, and a return of *nulla bona* made. The judgment-editor then presented a petition for a winding-up order against the mpany, but the debt being doubtful, and it being alleged by the mpany that the judgment was obtained by fraud, the court ordered e petition to stand over for a limited time, to give the Company an portunity of taking proceedings to impeach the judgment.

Per Lord Cranworth.—Where there is clear proof that a debt upon ich a winding-up order is sought is valid at law and in equity, the urt will ordinarily make the order, but where the debt is impeached e court will exercise its discretion: (*Bowes* v. *The Hope Mutual Life surance and Honesty Guarantee Society*, 11 Jur. N. S. 643, in Dom. Proc.; L. T. N. S. 680; 35 L. J. Ch. 574.)

The court, however, is not bound, *ex debito justitiæ*, to make an imme-ate order to wind-up a Company even upon the petition of a creditor ose debt is admitted and not paid, but may under this and sect. 91, ra, order the petition to stand over to enable the Company to make angements for the payment of its debts, and the successful carrying of its business, and will make such order where there is a reasonable

hope of such arrangements being made: (*Re Brighton Hotel Company*, Law Rep. 6 Eq. 339.)

The hearing having been adjourned, in this case, an order was ultimately made for discharging the provisional liquidators, and staying all further proceedings on the petitions, upon payment of the debts and costs of the petitioners, and the costs and remuneration of the liquidators.

In *Re Imperial Silver Quarries Company* (W. N. 1868, p. 234), the court allowed the drawing up of the order on a creditor's petition to be postponed for ten days, as it was contended that the Company had assets, although the debt was sufficient to support a winding-up order.

In the following cases, also, petitions were ordered to stand over: *Re Imperial Bank of China, India, and Japan*, Law Rep. 1 Ch. App. 339; *Re London and Manchester Direct Railway Company, Ex parte Pocock*, 1 De G. & S. 731; *Re Bosworthon Mining Company*, 26 L. J. Ch. 612; *Ex parte Moss*, 14 Jur. 754; *Ex parte Collins*, 8 W. R. 170; *Re Monmouthshire and Glamorganshire Banking Company*, 15 Beav. 74; *Ex parte Williams*, 1 Sim. N. S. 57; *Wheal Anne Mining Company*, 30 Beav. 601; *North-Western Trunk Company*, 3 De G. & S. 266; *Re British Provident Assurance Society*, 1 Drew. & Sm. 113.

A shareholder's petition, on the ground of an unjustifiable transfer of the Company's business, was ordered to stand over until the question as to the transfer should have been decided, in a suit properly instituted for the purpose: (*Re International Life Assurance Society*, W. N. 1868, p. 312.)

See, also, *Re Albert Insurance Company*, W. N. 1868, p. 48.

(*e*) *Any other order that it deems just.*]—A Company passed a resolution for a voluntary winding-up under supervision. The liquidator called up all the remaining unpaid capital, but declared no dividend, the only excuse given by him being that the Company was prosecuting a claim against their manager.

On a petition by creditors, whose debt amounted to three-fourths of the whole debts, and which had remained unpaid for a year and a half, it was held that they were entitled to an order for a compulsory winding-up: (*Re Manchester Queensland Cotton Company*, 16 L. T. N. S. 583, Ch.; W. N. 1867, p. 192.)

See, also, *Re London and Mediterranean Bank*, 15 L. T. N. S. 153, Ch.

A Company duly passed a resolution at a general meeting for a voluntary winding-up under supervision, and a petition was presented accordingly. The liabilities of the concern were enormous; and another petition being presented, before the hearing of the former one, by a creditor for upwards of 300,000*l.*, praying an order to wind-up the Company compulsorily, it was held that the Company must be wound-up compulsorily: (*Re Barned's Banking Company*, 14 L. T. N. S. 451, Ch.)

A petition was presented in July, 1866, by the directors of the Oriental Commercial Bank, praying that the bank might be wound-up compulsorily, but at the hearing it was asked that it might be wound-up voluntarily under the supervision of the court. The Alliance Bank, a creditor for 9200*l.*, asked for a compulsory winding-up, and a majority of the creditors not having opposed, the Vice-Chancellor made an order to that effect. Subsequently, a majority of the creditors were in favour of a voluntary winding-up, and the Lord Chancellor, on appeal, decreed accordingly: (*Re Oriental Commercial Bank*, 15 L. T. N. S. 8, on appeal; W. N. 1866, p. 312.)

Vhile a Company was in course of voluntary winding-up, a petition presented by a creditor and a shareholder for a continuance of the ntary winding-up, under the supervision of the Court; and before order was made on it, another petition was presented by creditors ı compulsory winding-up. The Master of the Rolls, with a view to peculiar circumstances of the case, made an order dated the day of hearing for a continuance of the voluntary winding-up under the rvision of the court, and an order to be dated the following day ı compulsory winding-up, which would supersede the former order: *United Service Company*, W. N. 1868, p. 267.)

Vhere a creditor petitions for a compulsory winding-up, although the t may allow the petition to stand over if the Company undertake to the debt, the court will not do so simply to enable the Company to l-up voluntarily, even though a voluntary winding-up is wished for ı considerable body of other creditors: (*Re General Rolling Stock pany*, 34 Beav. 314.)

:e, also, *Re Beaujolais Wine Company*, Law Rep. 3 Ch. App. 15.

he creditors of an insolvent Company were held entitled to a wind-up order, although there would be, by reason of prior claims, no ts coming to them, on the principle that the concern was actually rs, and that they ought to have the control of the management: *Isle of Wight Ferry Company*, 2 Hem. & Mil. 597.)

creditor had presented a petition for winding-up a Company, ch was in the paper for hearing on the 11th of May, but at the est of the Company he allowed it to stand over. He was then vare, but afterwards discovered, that the Company on the 16th of il had executed, and on the 7th of May had registered, a bill of sale ıe effects of the Company to one of the directors: it was held that, r the circumstances, he was entitled to an order for a compulsory ling-up: (*Re London and Provincial Starch Company, Ex parte Adams*, ı. T. N. S. 474, Ch.)

Vhere a petition was pending for winding-up a Company in one ch of the Court, and an official liquidator had been provisionally ointed, but the petitioner had failed to prosecute the petition within time limited, the court, in the interim, granted to a second ioner, in another of its branches, an order to wind-up the Company: *Consolidated Bank*, 14 L. T. N. S. 656, Ch.)

Orders on Contributories' Petitions.

he transferee of scrip certificates transferable by delivery, which led the holder to become a shareholder in respect of the shares ein mentioned, and in the mean time to receive dividends, petitioned he winding-up of the Company. It was held by Knight Bruce, L.J., ning the decision of the Master of the Rolls (Turner, L.J., dis-ing), that the petitioner admitting himself to be a contributory and rtaking to do all acts necessary to make himself a shareholder, nding-up order might be made on his petition: (*Re Littlehampton, re, and Honfleur Steam Ship Company*, 2 De G. J. & S. 521, on al.)

Vhere a shareholder petitioned for a winding-up order, alleging that welve months and upwards the Company had been unable to carry usiness, and that a single shareholder possessed overwhelming ence in the concern, an order to wind-up was made, although a ial resolution had been passed (but not confirmed) for a voluntary ling-up: (*Re West Surrey Tanning Company*, Law Rep. 2 Eq. 737.)

A mining Company in which no profit had been made for the preceding four years, and which was unable to discharge its existing liabilities without a further call on its shareholders, was ordered to be wound-up in compliance with the wishes of a minority of shareholders, although the majority were opposed to such a course: (*Re Great Northern Copper Mining Company of Australia*, 17 W. R. 462.)

But see *Re Suburban Hotel Company*, Law Rep. 2 Ch. App. 737, *supra*.

An order to wind-up was made on the petition of a shareholder, presented within three months after the Company was incorporated, on the ground, of its being a bubble scheme, of underhand dealings, and that "it ought not to be allowed to continue": (*Re London and County Coal Company*, Law Rep. 3 Eq. 355.)

Orders were also made on contributories' petitions in *Re Fire Annihilator Company* (32 Beav. 561), where a voluntary winding-up had been going on for an unreasonably long time without coming to an end; in *Re Metropolitan Warehousing Company* (W. N. 1867, p. 94), on the ground that the Company had not commenced business within a year; in *Re Wey and Arun Junction Canal Company* (W. N. 1867, p. 100).

See, also, *Re Electric Telegraph Company of Ireland* (22 Beav. 471), *Re Norwich Yarn Company* (12 Beav. 366), *Re Bastenne Bitumen Company* (3 De G. & S. 265), and *Re Sherwood Loan Company* (1 Sim. N. S. 165).

Ex parte Phillips (3 De G. & S. 3), *Ex parte Dee* (Ib. 112), *Ex parte Lawton* (1 K. & J. 204), and *Re Pennant and Craigwen, &c., Mining Company* (15 Jur. 1192), were cases where the Company in question had amalgamated with another Company.

Where a winding-up order had been made on the petition of a shareholder who is afterwards made a contributory, he is entitled to the costs of the petition and order, though a debtor to the Company in respect of calls, without having the amount of such calls set off against the costs: (*Re General Exchange Bank*, Law Rep. 4 Eq. 138; 16 L. T. N. S. 338.)

Where all the shares of a Company have been fully paid-up and the assets of the Company are insufficient to discharge its debts, the court will pay regard to the wishes of creditors in preference to those of shareholders: (*Re Lonsdale Vale Ironstone Company*, 16 W. R. Ch. 601.)

But see *Re Trowbridge Water Supply Company*, 18 L. T. N. S. 115.

As to the power of a paid-up shareholder to present a petition, see sect. 82 of this act.

The *onus* of proof lies on a holder of paid-up shares, who petitions for a winding-up order to show that he has an interest. He must do this by definite statements, not by mere general allegations. He has no interest if the Company be insolvent: (*Re Lancashire Brick and Tile Company*, 34 L. J. Ch. 331; 11 Jur. N. S. 405.)

Where two petitions to wind-up were presented, one by a paid-up shareholder, the other by a shareholder who had only paid the deposit on application, it not appearing that the Company was insolvent, an order was made upon both petitions; but it was held that the paid-up shareholder was entitled to the conduct of the winding-up: (*Re Constantinople and Alexandria Hotels Company*, 12 W. R. 851.)

A Company made a call upon its shareholders, payable in two months' time; but in the interim, being unable to pay its debts, two petitions, one by a shareholder and the other by a judgment and execution creditor, were presented for winding it up. The court, notwithstanding the opposition of a majority of the shareholders, and an allegation on the part of the Company that it would be in a position to meet all its engagements as soon as the call had been paid, made an

rder to wind-up the Company on both petitions: (*Re International Contract Company, Ex parte Spartali and Tabor*, 12 Jur. 591; 14 L. T. 26.)

Two petitions were presented to wind-up a Company, the first by a reditor, the second and subsequent one by shareholders. The second ontested the debt upon which the first was founded, and alleged cir-umstances to show that the relations between the creditor (a banking ompany) and the Company required investigation. The Master of he Rolls made an order on both petitions, on the ground that he could ot dismiss the first without determining that the debt was bad, nor the econd without coming to the conclusion that the charges made by it ere frivolous and unsubstantial; and that he could not arrive at ither conclusion upon the evidence. The carriage of the proceedings as given to the shareholders who presented the second petition: (*Re undy Granite Company*, W. N. 1868, p. 260.)

Where several petitions to wind-up have been presented, and the rder made, but subsequent attempts at an arrangement, by reason of hich the order was not drawn up, have failed, the court will not deal ith the question of the carriage of the order, or of post dating it, except in he presence of all parties: (*Re Disderi and Company*, 18 L. T. N. S. 870.)

Reversal or Discharge of Order.

Where a winding-up order has been made, no question can be raised ffecting the constitution of the Company, or the validity of the pro-eedings in the winding-up, until the winding-up order is discharged: *Re Overend, Gurney, and Co., Ex parte Oakes and Peek*, 36 L. J. Ch. 13.)

But where the order has been made by a court that has no jurisdiction o make it, it is invalid, and must be treated as such, although it has ot been appealed against: (*Re Plumstead, &c., Water Company*, 28 Beav. 45; 2 De G. F. & J. 20.)

An order for the winding-up of a Company may be appealed from n the usual manner. It has been held (*Re Universal Bank*, Law Rep. Ch. App. 428), that sect. 124, *infra*, does not apply to orders made on n original petition to wind-up, and therefore that such orders may be ppealed from, although more than three weeks have elapsed from the aking of the order complained of. With regard to the practice before this ct, see *Re Anglo-Californian Gold Mining Company* (1 Drew. & Sm. 628), nd *Re Plumstead, &c., Water Company* (28 Beav. 545; 2 De G. F. & J. 20).

In *Re National Savings Bank Association* (Law Rep. 1 Ch. App. 554), Company appealing against a winding-up order was allowed its costs ut of its own estate, although the appeal was dismissed.

As to a party, who has obtained an order, enrolling it so as to prevent n appeal except to the House of Lords, see *Re Direct London and Exeter ailway Company*, 1 Mac. & G. 534.

Where it was sought to stay all proceedings under a winding-up order nade under "The Winding-up Act, 1848"), until the hearing of an ppeal about to be presented to the House of Lords, the application was efused: (*Re London and Manchester Direct Railway Company*, 1 Mac. G. 176.) By sect. 89, *infra*, however, the court has power to stay the roceedings under a winding-up order on the application of any creditor r contributory.

The court that has made a winding-up order will, on motion or etition, discharge the same, if it be shown that material circumstanees ere concealed or misrepresented, and if these circumstances were

within the knowledge of the original petitioner, he will be compelled to pay the costs of the application to do so: (*Re Ipswich, &c., Railway Company, Ex parte Barnett*, 1 De G. & S. 744; *Re Cambrian Junction Railway Company, Ex parte Coleman*, 3 *Ib.* 139.)

But the court will not discharge the order unless applied to promptly after the grounds for making the application are known. See *Re Metropolitan Carriage Company, Ex parte Clarke*, 1 K. & J. 22; *Re Chepstow, Gloucester, &c., Railway Company*, 2 Sim. N. S. 11; *Re Direct Exeter, Plymouth, &c., Railway Company, Ex parte Woolmer*, 5 De G. & S. 117; on appeal, 2 De G. M. & G. 665.

It has been held that a winding-up order made under "The Companies Act, 1856," was not invalidated by the fact that the creditor, in demanding payment of the debt on which his petition was founded (see sect. 80, *supra*), demanded a larger sum than was really due to him by the Company: (*Cardiff Preserved Coal, &c., Company* v. *Norton*, Law Rep. 2 Ch. App. 405.)

Order Notice of Discharge to Servants.

An order for the winding-up of a Company is notice of discharge to the servants of the Company: (*Re General Rolling Stock Company, Chapman's case*, Law Rep. 1 Eq. 346; 12 Jur. N. S. 44.)

But Wood, V.C., held, distinguishing the last case, that, although where the business of a Company is wholly at an end, a winding-up order may be notice of discharge to the servants of the Company from the date of the order, yet where the business is continued after the winding-up, and the former servants are actually employed, the old contract between the Company and its servants continues in force, and notice of discharge must be given pursuant thereto: (*Re English Joint-Stock Bank, Ex parte Harding*, Law Rep. 3 Eq. 341.)

See, also, *Re English Joint-Stock Bank, Ex parte Finney* (W. N. 1867, p. 97), as to a claim by the manager of a bank for arrears of salary, up to the date of a winding-up order. As to such claims generally, see sect. 158, *infra*.

87. *Actions and suits to be stayed after order for winding-up.*—When an order has been made(*a*) for winding-up a Company under this act no suit, action, or other proceeding shall be proceeded with(*b*) or commenced against the Company except with the leave of the court,(*c*) and subject to such terms as the court may impose.

(*a*) *When an order has been made, &c.*]—See sect. 163 of this act, by which attachments, sequestrations, and executions, put in force after the commencement of the winding-up shall be void; and sect. 198 with reference to Companies authorised to register under this act, and sect. 202, *infra*, with regard to unregistered Companies.

Notwithstanding sect. 163, *infra*, the court has power, under this section, where a winding-up order has been made, to give leave to a creditor to proceed with an execution; and it was thrown out by Wood, V. C., that the 163rd section has reference to cases of fraudulent preference: (*Re London Cotton Company*, Law Rep. 2 Eq. 53.)

See, also, *Re Kingstown Royal Marine Hotel Company*, 15 W. R. 978.

(*b*) *Shall be proceeded with, &c.*]—As to the court in which an action is brought staying proceedings in such action, see *Thomas* v. *Wells* (33 L. J.

P. 211), and *M'Kenzie* v. *Sligo and Shannon Railway Company* (18 Q. B. S. 862; 21 L. J. Q. B. 380), decisions under the repealed acts in the urts of Common Law. See, also, *Barnes* v. *Thrupp*, 27 L. J. Ch. 183. But where an order for winding-up a Company has been made, a ge sitting at Nisi Prius will not under this section stop all further ceedings in an action brought against the Company after the cause been called on and the jury sworn; and it seems that the proper rse to be pursued is, to apply on affidavit, setting out the fact of order having been made, to the judge before the cause has been ed on: (*Henderson* v. *Peruvian Railway Company*, 16 L. T. N. S. 297,)

A creditor of a Company, on the day on which a winding-up order s made, obtained a judgment against the Company, and issued a *fa.*, which he subsequently delivered to the sheriff for execution. e court, on the application of the official liquidator, restrained further ceedings: (*Re Waterloo Life, &c., Insurance Company*, 31 Beav. 589; ur. N. S. 292, Ch.; 7 L. T. N. S. 459.)

A private individual, who is defendant in the same suit with a joint-k Company against which a winding-up order has been made, is entitled to have further proceedings stayed, on the ground that application has been made under this section for leave to proceed h the suit: (*Wells* v. *Estates Investment Company*, 15 W. R. 762.) See, also, *Re United English and Scottish Assurance Company* (Law Rep. q. 300), *post*, and the same Company, *Ex parte Hawkins* (Law Rep. h. App. 787), *post*.

c) *Except with the leave of the court, &c.*]—Any application under this ion, for leave to continue proceedings against a Company in process winding-up, must be made in that branch of the court in which the ding-up order has been made, and not in that in which the pro-dings have been instituted: (*Wilson* v. *Natal Investment Company*, L. J. Ch. 312.)

n a suit against a Company to restrain trespass, liberty was given, ler this section, to the plaintiffs, after a winding-up order, to proceed h the suit: (*Wyley* v. *The Exhall Coal Mining Company*, 33 Beav. 538.) Where the plaintiff commenced a suit against a Company and another son, subsequently to which an order for winding-up the Company s made, and Stuart, V.C., refused to the plaintiff leave to proceed h the suit, the Court of Chancery Appeal discharged the order, being opinion that this section was not intended to prevent the prosecution such a suit, to which a Company in liquidation was a necessary ty.

The court will not order the plaintiff in such a case to give security costs unless special circumstances are shown to justify such an order: *cEwen* v. *The London, Bombay, and Mediterranean Bank*, 15 L. T. S. 495, Ch.)

Where a creditor in an action against a Company had, before a ition for winding-up the Company was presented, recovered judgment l sued out a writ of execution, which was in the sheriff's hands, and uld have been executed but for resistance made to the sheriff's officer, court, after making the winding-up order, in the exercise of its cretion, dissolved an injunction, restraining the execution which had n obtained on motion *ex parte* by the petitioning creditor immediately r the presentation of the petition, and gave leave to put in force the cution: (*Re London Cotton Company*, Law Rep. 2 Eq. 53.)

See, also, *Re Bastow and Company*, Law Rep. 4 Eq. 681; 16 L. T. N. S. 788, *post*, and *Re Plas-yn-Mhowys Coal Company*, Law Rep. 4 Eq. 689, *post*.

Where an application was made by mortgagees of land belonging to a Company, which had been ordered to be wound-up, for leave to file a bill for foreclosure against the Company, the application was refused by the Master of the Rolls, on the ground that the applicants could obtain all the relief they required in chambers in the winding-up. On appeal, however, leave was given to file the bill: (*Re St. Cuthbert's Lead Smelting Company*, W. N. 1866, pp. 84, 90.)

An applicant under this section for leave to file a bill against a Company must file a short affidavit verifying such of the allegations of the bill as are within his own knowledge and stating his belief of the truth of the other allegations: (*Re St. Cuthbert's Lead Smelting Company*, W. N. 1866, p. 154.)

Where a shareholder succeeded in a suit against a Company and its directors for misrepresentation, the costs of an application in the liquidation (in another branch of the court), for leave to proceed in the suit, were ordered to be included in the costs of the suit: (*Henderson* v. *Lacon*, Law Rep. 5 Eq. 249.)

Where an application was made for leave to proceed with a suit, by a shareholder on behalf of himself and other shareholders, against the directors and the Company as defendants, an order was made that the suit might be proceeded with, on an undertaking by the plaintiffs not to take any steps to enforce any decree against the Company, without the leave of the court, the Master of the Rolls saying that in future such applications should be made by summons in chambers: (*Hagell* v. *Currie*, *Re Breech-Loading Armoury Company*, W. N. 1867, p. 75.)

See, also, *Philips* v. *Ottoman Financial Association*, *Re Ottoman Financial Association*, W. N. 1867, p. 107.

88. *Copy of order to be forwarded to registrar.*—When an order has been made for winding-up a Company under this act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the Company.

89. *Power of court to stay proceedings.*—The court may at any time after an order has been made for winding-up a Company, upon the application by motion (*a*) of any creditor or contributory (*b*) of the Company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

(*a*) *Upon the application by motion, &c.*]—The application should be made to the court that made the winding-up order, and the court should be satisfied that it is not for the interest of the Company or of those interested in the winding-up that the proceedings should go on. See *Re Worcester, Tenbury, and Ludlow Railway Company*, 3 De G. & S. 189.

The court refused to stay proceedings in a winding-up pendin appeal from the winding-up order about to be presented to the H of Lords: (*Re London and Manchester, &c., Railway Company, Ex Barber*, 1 Mac. & G. 183.)

Where a person seeks to have the proceedings in a winding-up sta he is bound to give proper notice to all parties interested in the m of his intention to move for an order to that effect; the court ref to make such an order where the notice was, of a motion to charge a call (*Re Dover, Hastings, &c., Railway Company, Carew's* 5 De G. M. & G. 94), and of a motion to be struck off the list of tributories: (*Re Eastern Counties, &c., Railway Company, Underw case*, Ib. 677.)

See, also, *Re Dover and Deal, &c., Company, Ex parte Clifton*, Ib. *Ex parte Coleman*, 3 De G. & S. 139.

As to the payment of previously incurred costs by those who see stay the proceedings in a winding-up, see *Re Metropolitan Car Company, Clarke's case*, 1 Kay & J. 22; *Re Direct Exeter, Plymouth, Railway Company, Woolmer's case*, 2 De G. M. & G. 665.

(*b*) *Any creditor or contributory, &c.*]—Where a motion was m on behalf of persons "alleged contributories of the Continental I Corporation," to stay the proceedings in relation to a winding-up, they declined to admit that they were contributories, the applica was refused with costs.

But upon the motion being afterwards renewed by way of app they were allowed to proceed with the motion on its merits, on t admitting themselves to be contributories in respect of one share e (*Re Continental Bank Corporation, Re London and Mediterranean B* W. N. 1867, pp. 114, 178; 16 L. T. N. S. 112, Ch.)

90. *Effect of order on share capital of Company limited guarantee.*—When an order has been made for winding a Company limited by guarantee and having a cap divided into shares, any share capital that may not h been called up shall be deemed to be assets of the Comp and to be a debt(*a*) (in England and Ireland of the nat of a specialty) due to the Company from each member the extent of any sums that may be unpaid on any sha held by him, and payable at such time as may be appoin by the court.

(*a*) *And to be a debt, &c.*]—See sect. 75, *supra*, as to all Compa under this act.

See, also, sect. 134, *infra*.

91. *Court may have regard to wishes of creditors or con butories.*—The court may, as to all matters relating to winding-up, have regard to the wishes of the creditors contributories(*a*), as proved to it by any sufficient evide and may, if it thinks it expedient, direct meetings(*b*) of creditors or contributories to be summoned, held, and c

ducted in such manner as the court directs,(*c*) for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the Company.

(*a*) *The court may have regard to the wishes of the creditors or contributories.*]—On a petition for winding-up on the ground that the business of a Company was carried on at a loss, and that a change had been introduced in the system of working it, a meeting of shareholders, held by the direction of the court had decided that it was expedient that the Company should be carried on. The court being satisfied that the Company was solvent, and that the new system of which the shareholders approved was not inconsistent with the scheme of the Company, declined to make an order for winding-up: (*Re Factage Parisien Company*, 13 W. R. 330; 34 L. J. Ch. 140.)

See, also, *Re Brighton Hotel Company* (Law Rep. 6 Eq. 339), where a creditor's petition was ordered to stand over at the instance of the shareholders, there being reason to believe that the Company would discharge their liabilities.

The court will not make a winding-up order, at the wish of a minority of shareholders against the will of a majority, simply on the ground that the Company has carried on business at a loss: (*Re Suburban Hotel Company*, Law Rep. 2 Ch. App. 737.) In his judgment in this case, Lord Cairns, L. J., said, "What I am prepared to hold is this, that this court, and the winding-up process of the court, cannot be used, and ought not to be used as the means of evoking a judicial decision as to the probable success or non-success of a Company, as a commercial speculation."

(*b*) *May, if it thinks it expedient, direct meetings, &c.*—Where a shareholder petitioned for a winding-up order, and asked the court to direct a meeting of the shareholders to be held, the court, having dismissed the petition for want of sufficient grounds, held that it could not direct a meeting to be held except with the sanction of the shareholders, a majority of whom it appeared were opposed to such a course being adopted: (*Re Joint-Stock Coal Company*, W. N. 1869, p. 82.)

(*c*) *Conducted in such manner as the court directs.*]—See, also, sect 149, *infra*, and General Order of 1862, clauses 45—47, *post*.

OFFICIAL LIQUIDATORS.

92. *Appointment of official liquidator.*—For the purpose of conducting the proceedings in winding-up a Company, and assisting the court therein, there may be appointed a person or persons to be called an official liquidator (*a*) or official liquidators; and the court having jurisdiction may appoint such person (*b*) or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator

or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the court.

(*a*) *To be called an official liquidator, &c.*]—Where the winding-up is voluntary, the title of this officer is "liquidator" simply, omitting the word "official." See sect. 133, cl. 2, *infra*.

(*b*) *The court having jurisdiction may appoint such person, &c.*]—As to the practice with regard to the appointment of official liquidators, see General Order of November, 1862, clauses 8—19, *post*.

Where a judge in the exercise of his discretion has appointed an official liquidator, the Court of Appeal will not disturb the appointment: (*Re International Contract Company*, Law Rep. 1 Ch. App. 523; 12 Jur. N. S. 591, Ch.; 14 L. T. N. S. 843; *Re London, Bombay, and Mediterranean Bank*, Law Rep. 1 Ch. App. 525.)

See, also, *Re Merchant Traders' Ship Loan and Assurance Company*, (15 Jur. 981), and compare it with the case next cited.

An order having been made for winding-up a Company, A. was proposed as official manager by one contributory, B. by another. The chief clerk decided to appoint B., and refused an application by A.'s proposer to adjourn the question to be considered by the judge personally. The judge, on being applied to, refused to disturb the appointment unless it was shown that B. was an unfit person. It was held. on appeal, that as the judge had not personally decided the question which of the two persons proposed was more eligible, the appointment ought to be discharged without prejudice to the judge's re-appointing B., if in the exercise of his discretion he should think fit to do so. Turner, L. J., observing that in proceedings in chambers every party has the unqualified right to have his case heard by the judge personally if he requires it; and the chief clerk cannot refuse an application to have it so heard: (*Re Agriculturist Cattle Insurance Company*, 3 De G. F. & J. 194, on appeal.)

Which case also see for observations as to the employment of accountants.

In the case of *Re General Provident Assurance Company* (W. N. 1868, p. 241), Malins, V.C., laid down the rule that the chief clerk was to sanction the appointment, in all cases, of the official liquidator proposed by the party having the carriage of the order to wind-up, provided he was satisfied that such person was fit and proper to be appointed, without reference to the fitness or qualifications of any other person proposed by other parties.

In the case of *Re London and Northern Insurance Company* (W. N. 1868, p. 182), Giffard, V.C., observed that under no circumstances did he give the costs of a contest about the appointment of liquidators.

Where an order for the appointment of an official liquidator, was obtained *ex parte* before an order to wind-up the Company had been

made, it was discharged: (*Re Railway Finance Company*, 35 Beav. 473.)

93. *Resignations, removals, filling up vacancies, and compensation.*—Any official liquidator may resign or be removed by the court on due cause shown: And any vacancy in the office of an official liquidator appointed by the court shall be filled by the court: (*a*) There shall be paid to the official liquidator such salary (*b*) or remuneration by way of percentage or otherwise, as the court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the court directs.

(*a*) *Shall be filled by the court.*]—See clause 16 of the General Order, 1862, *post.*

(*b*) *There shall be paid to the official liquidator such salary, &c.*]—The remuneration payable to official liquidators is now regulated by the Chancery Order of May, 1868, which is given *in extenso* in connection with clause 18, General Order, 1862, *post.*

Where an official liquidator appointed in the winding-up of a bank, commenced previously to the order of May, 1868, put in a claim for remuneration which was resisted by the Company, the court, in determining the amount payable to him, acted on the following principles.

First. The court, having regard to the circumstance under which the bank stopped payment, and the nature and enormous amount of the assets and dividends, refused to allow payment upon the basis of percentage.

Secondly. It would not increase or diminish the amount of remuneration by reason of profit or loss having resulted from the operations of the liquidator.

Thirdly. Having regard to the order of May, 1868, it held that the amount of the remuneration was to be estimated by the time and labour employed by the liquidator himself and his clerks; but in such calculation the services of clerks of the bank, who had been employed by the liquidator, and paid out of assets of the bank in liquidation, was not to be included: (*Re Agra and Masterman's Bank, Cannan's claim*, Law Rep. 7 Eq. 102.)

For the circumstances under which the court refused to remunerate an official liquidator, see note under sect. 97, *infra.*

94. *Style and duties of official liquidator.*—The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular Company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions (*a*) to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the court.

(*a*) *All the property, effects, and things in actions, &c.*]—Although all the property of a Company being wound-up, is thus vested in the official liquidator, its position as to suits and actions is kept unaltered, and it may be dealt with just as if no stoppage had occurred, and no liquidation were in progress save so far as this act excepts, see *Re Agra and Masterman's Bank, Anderson's case*, Law Rep. 3 Eq. 337.

See sect. 203, *infra*, as to unregistered Companies.

95. *Powers of official liquidator.*—The official liquidator shall have power, with the sanction of the court,(*a*) to do the following things:(*b*)

To bring or defend any action,(*c*) suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company:

To carry on the business of the Company,(*d*) so far as may be necessary for the beneficial winding-up of the same:

To sell the real(*e*) and personal and heritable and moveable property, effects, and things in action of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels:

To do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the Company's seal:

To prove, rank, claim, and draw a dividend in the matter of the bankruptcy(*f*) or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors:

To draw, accept, make, and endorse any bill of exchange(*g*) or promissory note in the name and on behalf of the Company, also to raise upon the security of the assets of the Company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such Company in the course of carrying on the business thereof:

To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys(*h*) due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself:

To do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

(*a*) *With the sanction of the court.*]—As to the court providing that an official liquidator may exercise any of the powers given by this section without its sanction, see the next section.

As to the mode of obtaining the direction or sanction of the court, see clauses 48—50 of the General Order, 1862, *post.*

(*b*) *To do the following things.*]—If a liquidator acts without the sanction of the court where the act requires such sanction, he exposes himself to serious consequences. See *The Grand Trunk, &c. Railway Company* v. *Brodie*, 3 De G. Mac. & G. 146, and *Caldwell* v. *Ernest*, 27 Beav. 39, 42.

See, now, "The Liquidation Act, 1868," *post*,

(*c*) *To bring or defend any action, &c.*]—In speaking of this clause, the Master of the Rolls said: "The first clause is for getting in property belonging to the Company itself, before the winding-up order is made. In all such cases he must sue in the name of the Company, and where the Company is sued he must defend in the name of the Company; but where in the course of winding-up he endeavours to get from a contributory the amount of his contribution, in those cases the official liquidator may sue also with the sanction of the court, and the sanction of the court I have always given to the official liquidator for that purpose:" (*Turquand* v. *Kirby*, Law Rep. 4 Eq. 128.)

See *The Joint-Stock Discount Company* v. *Brown* (Law Rep. 3 Eq. 139), where the official liquidator filed a bill in equity in the name of the Company impeaching certain transactions in which the directors of the Company had engaged.

Where an unregistered Company is being wound-up under this act, the official liquidator has power under this section, in his own name, and on behalf of the Company, to institute a suit in equity against its directors, for the purpose of compelling them to make good losses occasioned by their misconduct in the management of its affairs: (*Turquand* v. *Marshall*, Law Rep. 6 Eq. 112.)

Where a Company is in course of winding-up, an action brought in its name cannot be compromised without the sanction of the court: (*Re Joint-Stock Discount Company*, W. N. 1868, p. 240.)

An action having been brought by an official liquidator, in the name

of a Company that was being wound-up, to recover arrears of calls defendant obtained an order to administer interrogatories to ce directors of the Company, and for a stay of proceedings. The dire not having answered the interrogatories, an application was mad the official liquidator for an attachment against them: and it was that the directors did not cease to be officers of the Company on commencement of the winding-up, and that they were therefore b to answer the interrogatories; and that although the official liquic was not the party who had obtained the order for the interrogat nor a party on the record, he was, under the circumstances, so inter in the matter as to be entitled to apply for an attachment: (*The M Bank* v. *Bayley*, Law Rep. 2 Q. B. 37; 36 L. J. 15, Q. B.; 15 L N. S. 292.)

A., being under liability to a bank upon his acceptance, to fall d July, 1866, took, in the ordinary course of business, an acceptan the bank. This acceptance fell due and was dishonoured on the of June, and on the 23rd of June an order was made for windin the bank. A.'s acceptance having matured in the hands of the of liquidator, it was held that A.'s right of set-off was not interfered by the winding-up order, and the official liquidator was restrained enforcing payment, under the winding-up, of A.'s acceptance: *Agra and Masterman's Bank*, *Anderson's case*, Law Rep. 3 Eq. 36 L. J. Ch. 73.)

In a proceeding against a Company in a winding-up, the off liquidator is bound to answer questions and produce documents, he had been made a defendant in a suit for the purpose of discov (*Re Barned's Banking Company*, *Ex parte Contract Corporation*, Law 2 Ch. App. 350.)

See, also, *Beardshaw* v. *Londesborough* (21 L. J. C. P. 17), *Russe Croysdill* (11 Exch. 123), and *Armstrong* v. *Normandy* (19 L. J. Ex. —cases decided under the repealed acts.

(*d*) *To carry on the business of the Company, &c.*]—As to the off liquidator getting a share of the profits of goods finished by hir carrying on the business of a Company, see *Re Hill Pottery Comp* W. N. 1866, p. 339.

(*e*) *To sell the real, &c.*]—As to sales, see clause 32 of the Ge Order, 1862. This clause of the section is not to be read in conne with sect. 161, *infra*; and where a Company is being wound-up pulsorily, the court has no power under this clause to authorise a tra of the Company's business to a new Company, in consideration of new Company's paying the debts of the creditors by instalments; it seems the only way of carrying out such an arrangement woul by converting the compulsory into a voluntary winding-up: (*Re Ge Exchange Bank*, 15 W. R. 477, M. R.; W. N. 1867, p. 63; 16 L N. S. 340.)

But it was held by Wood, V.C., that the court had power under section to transfer the assets of a Company under liquidation, to a Company for deferred payments secured by the promissory notes of new Company: (*Re Agra and Masterman's Bank*, W. N. 1866, p. 40

See *Re Alexandra Hall Company* (W. N. 1867, p. 67) as to a sal the liquidator of the Company's property being opposed on the groun a combination among the purchasers at the auction to depreciate property.

(*f*) *To prove, &c., a dividend in the matter of the bankruptcy, &c*

The official liquidator can only prove for the balance he is entitled to prove for, after allowing a set-off as provided for in the 171st section of "The Bankruptcy Act, 1849," in cases where a right of set-off exists.

Accordingly, where a shareholder in a Company has executed a deed of assignment, which has been registered under "The Bankruptcy Act, 1861," the trustees of that deed are entitled to set off a debt due to the shareholder from the Company, against a demand for calls made by the official liquidator of the Company: (*Re Duckworth, Ex parte Cooper*, Law Rep. 2 Ch. App. 578; 16 L. T. N. S. 580.)

See, also, *Re Treasury Life Assurance, Ex parte Pepper*, 8 L. T. N. S. 533, Ch., on appeal.

As to a right of set-off where the shareholder is not bankrupt, see sect. 101, *infra*.

(*g*) *To draw, accept, make, and endorse any bill of exchange, &c.*]—The official liquidator is not authorised to do these things without the sanction of the court; and as to the principles by which the court is guided in granting or withholding this sanction, see the judgment of Turner, L. J., in *Re Commercial Bank Corporation of India and the East, Smith, Fleming, and Company's case; Gledstanes and Company's case*, Law Rep. 1 Ch. App. 538.

On this part of the section, see *Re Agra Bank, Ex parte Tondeur* (Law Rep. 5 Eq. 160), as to the stoppage of payment by a bank not being necessarily a breach of contract to accept bills.

At the time when an order was made for winding-up a Company, the Company was the holder of bills accepted by S. & Co., which would become payable in six months. At the same time S. & Co. were holders of bills drawn by the Company, which the drawees, shortly before the winding-up order, had refused to accept. It was held (reversing the decision of the Master of the Rolls), that S. & Co. had no right to set off against each other the present liability of the Company under their dishonoured bills and the future liability of S. & Co. under their acceptances, nor any right to have the bills retained by the official liquidator, until a right of set-off arose, but that the official liquidator ought to be allowed to negotiate the bills accepted by S. & Co. In his judgment, Turner, L. J., desired not to be understood as intimating any opinion in favour of the court having a jurisdiction, under this act (without bill), to entertain an application by S. & Co. to restrain the official liquidator from negotiating their bills: (*Re Commercial Bank Corporation of India and the East, Smith, Fleming and Company's case, Gledstanes and Company's case*, Law Rep. 1 Ch. App. 538; 12 Jur. N. S. 806; 15 L. T. N. S. 148.)

As to right of set-off where both acceptances had fallen due, see *Re Agra and Masterman's Bank, Anderson's case*, Law Rep. 3 Eq. 337, *supra*.

(*h*) *Any other act that may be necessary for obtaining payment of any moneys, &c.*]—An order for the payment of money into the bank to an account, is not an order to pay money to any person which can be enforced by writ of *fi. fa.* under the 6th rule of the 29th Consolidated Order, which only speaks of payment to a person and not to an account. Where in the course of winding-up, an order has been made on a contributory for payment of money into the bank to the account of the official liquidator, and it is desired to enforce that order by issuing a writ of *fi. fa.*, the course prescribed by the 38th Order of November, 1862, must be followed, and an order obtained for payment of the sum in question to the official liquidator himself: (*Re Leeds Banking Company*, Law Rep. 1 Ch. App. 150; 35 L. J. Ch. 311; 12 Jur. N. S. 304.)

96. *Discretion of official liquidator.*—The court may] vide by any order(*a*) that the official liquidator may exer any of the above powers without the sanction or in vention of the court, and where an official liquidato provisionally appointed may limit and restrict his pov by the order appointing him.

(*a*) *The court may provide by any order, &c.*]—As to the cour making a winding-up order directing that the liquidators should b liberty to do all such acts as are provided for by this section, wit the sanction or intervention of the court, see *Re South Kensington I Company*, W. N. 1868, p. 16.

97. *Appointment of solicitor to official liquidator.*—' official liquidator may, with the sanction of the co appoint a solicitor(*a*) or law agent to assist him in the] formance of his duties.

(*a*) *Appoint a solicitor, &c.*]—Where the official liquidator app as his solicitor the solicitor of the petitioner who has obta the winding-up order, he will be held guilty of culpable n gence if any of the interests entrusted to his charge suffe consequence of such solicitor having given him improper advice having failed to give him such advice as an impartial solicitor sh give under the circumstances. In a recent case that came b the Master of the Rolls (W. N. 1869, p. 25), the facts were as follc A., a director and chief promoter of a Company, petitioned obtained an order for its winding-up. The Company had done business, and there were only a few debts in addition to a sum of m owing for a tea estate purchased by the Company from B. In ord pay off this sum of money, it was proposed to sell the estate, and the balance by a call on the shareholders. when a proposition was n that the claims of the vendor B. should be compromised for 4 This arrangement was approved of by the official liquidator, and at instance confirmed by the court, and 1500*l.* was paid in respect of 4500*l.* The shareholders upon this intervened, and, bringing the m before the court, contested the propriety of the compromise. It shown that the tea estate, nominally the property of B., in re belonged to A. the petitioner in the winding-up, and the court came t conclusion that A. had got up the Company in order to sell it the es and petitioned to have it wound-up in order that he might obtai purchase-money, and also that the purchase-money, and even the 4 to be taken as a compromise, were both greatly in excess of the value. The Master of the Rolls set aside the whole transaction, ordered A. to refund the 1500*l.*, but A. in the meanwhile became b rupt. The result was, that the tea estate turned out to be w nothing, and a call had to be made on the shareholders in order to the expenses of the Company. A question then arose as to whether official liquidator should be allowed any remuneration, and in deci that question the Master of the Rolls thus expressed himself: "I already determined that he must have all his costs and money ou pocket; but ought he to have any remuneration? I think not. unquestionably true that he has acted with perfect good faith, an has merely made an error of judgment, and, in ordinary cases,

would not deprive him of his reward. But in this case he has not taken sufficient care to be well advised, and in this he has been guilty of culpable negligence. This arises from the parties to the winding-up having followed what, I regret to say, is too usual a course, but one which the court cannot control, viz., the solicitor of A. presented the petition to wind-up the Company and obtained the order. He proposed Mr. C. as official liquidator. Mr. C. is accordingly appointed official liquidator, and, in return, Mr. C. appoints the same gentleman to be his solicitor in the winding-up. The consequence is that there is no adverse examination of the affairs on both sides, and no due attention to the interests of the Company when they come in conflict with those of the promoters of the petition.

"The same solicitor acted for all parties; he proposed the compromise on behalf of A.; he advised C. to approve the compromise; he did not inform C. that if he pleased he might set aside the whole transaction relating to the sale of the property. If the official liquidator had employed another solicitor (as he has since done), his solicitor would have told him that the compromise was to be regarded, subject to this consideration—that if he pleased he might, on behalf of the Company, set the whole thing aside.

"I think that the official liquidator must, in this state of circumstances, be answerable for the wrong advice he received, and on which he has acted; and that I cannot give him remuneration for an error which was occasioned him, in consequence of his not employing a solicitor whose single duty would be to canvass strictly the transactions between the promoters of the petition and the Company itself. It is this that has caused the principal expense, and the only loss sustained by the Company."

Where the official liquidator changes his solicitors, and the assets are not sufficient to pay the whole of his costs, the bills of costs of the successive solicitors will, as a general rule, be paid rateably so far as the assets will extend; but where the first solicitor gave up documents to the second solicitor upon an undertaking that his costs should be paid out of the estate, it was held that his costs should be paid in full in priority to those of the second solicitor: (*Re Audley Hall Cotton-Spinning Company*, Law Rep. 6 Eq. 245.)

ORDINARY POWERS OF COURT.

98. *Collection and application of assets.*—As soon as may be after making an order for winding-up the Company, the court shall settle a list of contributories,(*a*) with power to rectify the register of members in all cases where such rectification is required(*b*) in pursuance of this act, and shall cause the assets of the Company to be collected, and applied in discharge of its liabilities.

(*a*) *The court shall settle a list of contributories.*]—The General Order of November, 1862, *post*, prescribes the mode of settling the list of contributories. The list is prepared in the first instance by the official liquidator from the register and other materials at his command, and left at the chambers of the judge in whose court the winding-up has commenced: (see Rule 29.) This list may be varied or added to, from time to time, by leave of the judge. Upon the list being left at the chambers the official liquidator obtains an appointment for the judge to settle the same, and

has to give notice in writing of such appointment to every person included in the list, stating in what character and for what number of shares or interest he is included, and similar notices are to be given when the list is varied or added to. Four clear days' notice must be given before the day of appointment: (see Rule 30.) By Rule 31 the result of the settlement is to be stated in a certificate by the chief clerk. Rules 60, 61, and 62 have reference to the attendance and appearance of persons for the time being on the list, at the proceedings relating to the winding-up.

As to who are contributories, see sects. 74—78. It appears that every person whose name is found upon the register of the Company, at the time when the order for winding-up is made, is a shareholder and liable to contribute towards the payment of the debts of the Company, to the extent of the sums due upon his shares (see sect. 38, *supra*), unless he can prove that his name was put upon the register without his consent.

As to what constitutes an agreement to become a shareholder in a Company, the grounds on which an agreement may be rescinded, and how the right of rescission is affected by a winding-up, see sect. 23, *supra*.

Where a person has actually ceased to be a member of a Company, for a period of one year prior to the commencement of the winding-up, he cannot, under any circumstances, be made a contributory. If the winding-up commences, however, before the expiration of the year, he may be made liable to contribute to the payment of such debts and liabilities as were incurred before he ceased to be a member, but he cannot be made thus liable unless where it appears that the existing members are unable to satisfy the contributions required from them: (see sect. 38, *supra*.)

When a person agrees to become a member of a Company, is placed upon the registry, and afterwards acts as a shareholder, he cannot resist being placed upon the list of contributories, whatever may have been the circumstances under which the shares were transferred or allotted to him. The transfer being bad as a deed would not affect the question of his liability, nor even dishonest conduct on the part of officers of the Company: (*Re International Contract Company, Langer's case*, 37 L. J. Ch. App. 292.)

As to the mode of ascertaining the liability of past members, see sect. 38, *supra*.

Application to remove Name from List.

Any application, to take a contributory off the list, must be made by motion under the winding-up, notwithstanding the pendency of substantive proceedings for that purpose: (*Wilson* v. *The Natal Investment Company*, 36 L. J. Ch. 312.)

A. and others, who all stood in the same position, were placed by the Master of the Rolls on the list of contributories. A. appealed, and the order as to him having been reversed, it was held to be unnecessary to rehear the cases of the others, as they would, in chambers, be struck off the list: (*Re National Assurance and Investment Association, Ex parte Munday*, 31 Beav. 206.)

The general rule of the court, that costs follow the result, applies in the absence of special circumstances, to cases of contributories under a winding-up, who have unsuccessfully opposed application to place them on the list: (*Re Birkbeck Life Assurance Company, Ex parte Barry* 2 Drew. & Sm. 321; 11 Jur. N. S. 76, Ch.; 11 L. T. N. S. 691.)

See, also, *Re London and Provincial Starch Company, Gower's case* (Law Rep. 6 Eq. 77), to the same effect.

When the holders of fully paid-up shares, who had successfully resisted an application that their names should be placed on the list of contributories, applied to have the costs paid out of the assets, after the petitioners in the winding-up had been paid theirs, the Master of the Rolls refused the application with costs, saying that the petitioners were the only persons to whom he gave any priority in respect of costs: (*Re Marlborough Club Company, Ex parte Percival*, Law Rep. 6 Eq. 519.)

When an application is made to the court to substitute one person for another on the list of contributories, and both parties are equally solvent, so that it is a matter of indifference to the creditors and contributories which of them is made a contributory, it is the duty of the liquidator to appear by one counsel only, and to take no part in the argument, and it seems that, in such a case, the unsuccessful party will be ordered to pay the costs of the liquidator: (*Re Overend, Gurney, and Company, Musgrave and Hart's case*, Law Rep. 5 Eq. 193.)

Two persons, an original allottee of shares and a purchaser of shares, separately moved the court to discharge an order, declaring them contributories in the matter of a Company which was being wound-up. Their motions were refused with costs, and the Vice-Chancellor's order contained a direction requiring them (jointly in point of form) to pay costs to the liquidators; on appeal to the House of Lords, this form was held to be erroneous, and it was held that each must be made answerable for the costs incurred in his own petition: (*Oakes* v. *Turquand and Harding, Peek* v. *the Same, Re Overend, Gurney, and Company*, Law Rep. 2 H. L. 325.)

Although a person's allowing his name to remain for a length of time on the list of contributories of a Company without making any objection, may be used as evidence against him, that it was rightly placed there; yet, where he is not, and never was, a shareholder, it does not raise any equity against his applying to have it removed, where no loss is sustained by the estate which would have been avoided if the application had been made earlier. And it is questionable whether, even in the case of such loss being sustained, any such equity would arise: (*Re Mexican and South American Company, Shewell's case*, Law Rep. 2 Ch. App. 387; 36 L. J. Ch. 353; 16 L. T. N. S. 194.)

See, also, *Re Alexandra Park Company, Hart's case*, Law Rep. 6 Eq. 512.

Rehearing Application.

Certain alleged contributories moved, on the ground of fraud in the prospectus, to have their names taken off the list. The motions were refused, with costs, and the order then made was enrolled for appeal to the House of Lords. Pending the appeal, the application was renewed in the court below, on several grounds, impugning the constitution of the Company, the validity of the winding-up order, and the appointment of liquidators, and on the ground of variance between the prospectus and Memorandum of Association, the applicants averring that the objections so raised had been discovered since the hearing of the previous motions. It was held that the motions could not be reheard on the alleged discovery of a variation between the prospectus and Memorandum of Association, and that until the winding-up order was discharged (which could not, after the enrolment, be done by the court below), no question could be raised affecting the constitution of the Company, or the

validity of proceedings in the winding-up. And the motions were missed, with costs: (*Re Overend, Gurney, and Company, Ex parte O and Peek*, 36 L. J. 413, Ch.; W. N. 1867, p. 101; 16 L. T. N. S. 148, (

Application on the Ground that Company was improperly constitute

After the Memorandum of Association of a Company was exec by the seven original subscribers, it was taken to the office of Registrar of Joint-Stock Companies for registration. Some words i memorandum, the effect of which was to make the objects for which Company was established very extensive, were objected to by the re trar, who refused to register the memorandum unless those words struck out. The solicitor's clerk who brought the memorandum registration thereupon struck out with a pen the words in question, the memorandum so altered was then and there registered, and registrar gave a certificate of its registration. It was held that the in which the alteration was made, and the receiving for registration memorandum so altered, was in the very highest degree censurable, that, so far as the original parties to the document were concerned alteration so made entirely neutralised and annihilated the ori execution of the document. But, inasmuch as the 18th section of act makes the registrar's certificate of the incorporation of a Com conclusive evidence that all the requisitions of the act in respec registration have been complied with, a person, who applied for obtained shares in the Company after its incorporation, could not es from liability as a contributory upon the ground that the Company not duly constituted (*Re Barned's Banking Company, Peel's case*, Rep. 2 Ch. App. 674; 16 L. T. N. S. 78, Ch.). For the same reason court refused an application to remove the names of contributorie the ground that the Company's Memorandum of Association had been signed by seven persons, as required by sect. 6, *supra*: (*Oak Turquand*, Law Rep. 2 H. L. 325.)

Application on the Ground of Infancy.

On the ground that an infant cannot be bound by a contract th not for his benefit, he will not, in the absence of fraud, be made a tributory on the winding-up of a Company, on whose register his n has been placed, but when he holds shares as a transferee, the pe who has transferred them to him will be made a contributory in place.

Where ten shares were standing on the register of a Company in name of an infant, upon the Company being wound-up, the court the application of the liquidators, removed the name of the infant the register in respect of the shares, and substituted that of the tr feror, although the ten shares origiually formed part of a batch of ei shares which had been purchased on behalf of the infant, all of w eighty shares had, prior to the winding-up, been sold by the infant purchase-money received, and the transfers executed by all the chasers, and the transferees of all (except the ten shares in quest entered on the register of shareholders: (*Re Imperial Mercantile C Association, Curtis's case*, Law Rep. 6 Eq. 455.)

See, also, *Re China Steamship and Labuan Coal Company, Copper's* (Law Rep. 3 Ch. App. 458), where the transferor of shares to an in was placed on the list of contributories in the winding-up, although infant transferee had been duly registered as the owner of the sha (*Re Joint-Stock Discount Company, Mann's case*, Law Rep. 3 Ch. A

459 ; 15 W. R. 1124), as to which see *Re Blakely Ordnance Company, Lumsden's case* (Law. Rep. 4 Ch. App. 31, *infra*) ; and *Re Electric Telegraph Company of Ireland, Reid's case* (24 Beav. 318).

But a transfer to an infant is not a nullity so as to be void *ab initio*, it is only voidable, and if the infant on coming of age elect to take the shares, it is to be presumed he may do so.

L. transferred fifty shares into the name of H., an infant, not known by him to be such, who was also the transferor of a large number of other shares in the same Company. H. was registered as the holder. H. attained twenty-one more than five months before the winding-up order, and in the interval transferred some of the other shares. He was settled on the list of contributories for the remaining shares, and did not at first raise the defence of his having been an infant ; but four months afterwards took out a summons to have his name taken off the list on that ground. The official liquidator then applied to have the name of L. placed on the list instead of that of H., in respect of the fifty shares. It was held (affirming the decision of the Master of the Rolls), that on the case before the court, H. must be deemed to have affirmed the transaction after he came of age, and that the application must be refused, without prejudice, however, to any application H. might make, if he thought fit to make one : (*Re Blakely Ordnance Company, Lumsden's case*, Law Rep. 4 Ch. App. 31.)

An infant shareholder attained her majority six months after the commencement of the winding-up of the Company, and was after due notice settled on the list of contributories, more than a year after the filing of the certificate of the settlement of the list, and nearly three years after she came of age she applied to have her name removed from the list. It was held (following Shewell's case, *supra*), that she had not by delay waived her right to have her name removed from the list : *Re Alexandra Park Company, Hart's case*, Law Rep. 6 Eq. 512.)

See, also, *Re Barned's Banking Company, Delmar's case* (W. N. 1868, p. 247), to the same effect as the last case.

Trustees.

When a person is placed upon the register by his own act as the holder of shares, and his name is on it when the Company is wound-up, he cannot escape liability as a contributory, on the ground that he is only a trustee of the shares for another, no notice of any trust being admissible on the register : (see sect. 30, *supra*.)

A person, into whose name shares had been transferred as a trustee for the Company, was held liable as a contributory, although he might have a right to be indemnified by the Company for any payments made by him in respect of the shares : (*Re Imperial Mercantile Credit Association, Chapman and Barker's case*, Law Rep. 3 Eq. 361.) See *Re Universal Banking Corporation, Ex parte Challis and others* (17 L. T. N. S. 637), to the same effect.

See, also, *Re International Contract Company, Levita's case*, Law Rep. 3 Ch. App. 36 ; *Re East of England Banking Company, Ex parte Bugg*, 2 Drew. & Sm. 452 ; 11 Jur. N. S. 616 ; 35 L. J. Ch. 43, and sect. 30, *supra*.

If, however, the name of the trustee is not actually entered upon the register, he will not be liable, although he may have agreed to take the shares on behalf of the Company.

The directors of a Company, in order to qualify S. to become a director, ordered W., secretary of the Company, to transfer to S. certain

shares belonging to the Company, and then standing in the name of S. executed the transfer, and attended as a director, but all the f prescribed for a transfer were not complied with. It was held that transfer was only colourable, and that S. was not liable to be ma contributory: (*Re Waterloo Life, &c., Company, Saunders's case*, 10 N. S. 246, Ch., on appeal; 10 L. T. N. S. 3.)

When shares are held in trust, the *cestui que trust* is not liable t placed on the list of contributories, whatever may be his liabiliti his trustee.

Companies.

There is nothing to prevent a limited Company from becomi member of another limited Company, if its own Memorandum Articles of Association authorise it to do so, and being made a co butory on the winding-up of the latter: (*Re Barned's Banking Comp Ex parte Contract Corporation*, Law Rep. 3 Ch. App. 105.)

Even though a Company's Memorandum and Articles of Associa do not directly authorise it to become a shareholder in another C pany, yet it may, under certain circumstances, be made liable contributory, as may be seen by the following case.

A banking Company I., the articles of which in general terms the directors very ample powers of management, and enabled the do everything incidental to the business of banking, advanced mone the deposit of shares in Company A. The directors becoming alar by a judicial opinion that the shares remained within the order disposition of the depositors, passed a resolution to have the shares tr ferred into the name of Company I. or its manager. They were acc ingly transferred into the name of Company I., the transfers b executed on behalf of Company I. by an agent, and not under Company's seal. The Company was registered as a shareholder, some of the shares, and received the purchase-money, and received dividends on the rest. Upon Company A. being afterwards wound it was held, that although the acts of ownership exercised by Com I. over the shares would not have prevented its repudiating them if transaction had been absolutely prohibited by their memorandum articles, and so *ultra vires*, Company I. was rightly placed on the li contributories, for that, although buying the shares of another C pany as a speculation, would have been *ultra vires*, it was within powers of the Company as bankers to advance money on the depos shares, and to do all such acts as were reasonable and proper for ma the security available. It was also held, that the fact of the tra not having been accepted by the Company under its seal was immate (*Re Asiatic Banking Corporation, Royal Bank of India's case*, Law 4 Ch. App. 252.)

Forfeited Shares.

Where the regulations of a Company provide for the forfeitu shares, and all the acts of forfeiture are complete, the mere fact the name of the shareholder has not been removed from the regi will not make him liable as a contributory in respect of the sh forfeited: (*Re Tavistock Ironworks Company, Lyster's case*, Law 4 Eq. 233; 36 L. J. Ch. 616.)

On the subject of forfeiture and cancellation of shares generally p. 28, *ante*.

Illegal Subdivision of Shares.

Where shares were illegally subdivided (before the Companies

1867) into shares of less nominal amount, it was held that where the original shares could be traced and identified, the shareholders were properly placed on the list of contributories: (*Re New Zealand Banking Corporation, Sewell's case*, Law Rep. 3 Ch. App. 131.)

Where shares were illegally subdivided (before the Companies Act, 1867) into shares of less nominal amount, and were thus transferred, it was held, in a winding-up of the Company, that, inasmuch as these shares could be identified on the books of the Company as being the shares into which the original shares had been divided, the transferee should be placed on the list of contributories: (*Re Finance Corporation, Ex parte Feiling, Holmes, and others*, Law Rep. 2 Ch. App. 714.)

Shares taken conditionally.

A Company, formed for the purpose of working a coal mine, of which C. was the owner, entered into a contract with him for the purchase of the same. By the agreement it was stipulated that a part of the purchase-money should be paid by an allotment of shares. The Company induced C. to take 250 additional shares, on the representation that a third person would, in that event, subscribe for 500 shares; and it was also suggested by the Company, that it would give more solidity to the Company if these shares were taken in the name of B., a friend of C., which was acceded to by the former, on condition that he would incur no liability in respect of them. No minute appeared in the Company's books of this understanding, but the shares were allotted to B., who was registered as the holder of the shares, and the deposit was paid by C. Subsequently C. took proceedings at law against the Company, on the ground that the agreement had not been carried out. The action was compromised, upon the terms that the 250 shares held by C. should be given up to the Company, which was accordingly done, and transfers were executed by C. in blank. The name of B. was struck out of the share ledger, but not from the register of shareholders. It did not appear that any of the transactions had been sanctioned by the general body of shareholders. On the Company being wound-up, the name of B. was put on the list of contributories. A motion, by way of appeal in Chancery and Bankruptcy, to remove his name from the list, was refused: (*Re Moseley Green Coal Company, Ex parte Barrett*, 10 Jur. N. S. 711, Ch., on appeal; 10 L. T. N. S. 594.)

If a person is induced to take shares on the faith of a promise by the promoters of a Company, which promise is not kept, he is nevertheless a contributory, his remedy being only against the persons who made the promise: (*Re United Kingdom Ship Owning Company, Felgate's case*, 2 De G. J. & S. 456, on appeal.)

Where a shareholder in a banking Company, under an arrangement for reconstituting the bank, exchanged his shares with the knowledge and consent of the directors for shares in the new concern upon the faith that he should be under no further liability in respect of the shares given up by him, and his name was removed from the register of shareholders, it was held, on the winding-up of the banking Company, that he was not relieved from his liability in respect of its debts, and that his name must be placed on the list of contributories: (*Re Continental Bank Corporation, Austen's case*, W. N. 1867, p. 138, affirmed on appeal, p. 244.)

A. and B. held each 500 original shares in a Company. It was afterwards determined that new shares in the Company should be created. One thousand original shares were to be transferred to C., who was thereupon to

join the direction of the concern. That arrangement was effecte A. and B. transferring their original shares to C.; and by each re ing an allotment of 500 of the new shares (which were duly create lieu of the old ones, and on being paid 10*s.* per share by the Com C. afterwards sold his 1000 shares at a large profit, but never joine concern. The Company was ordered to be wound-up, when A. a each repudiated their liability in respect of their 500 shares, o ground that they only consented to take them if C. joined the direc It was held that the test of the liability of A. and B. to be placed o list of contributories was, whether specific performance of their a ment to take the shares could have been decreed against them; that, as the court thought it could not, they were not contribute (*Re London and Hamburg Bank, Ex parte Preston*, 15 L. T. N. S. Ch.; W. N. 1867, p. 10)

With regard to qualified contracts for shares and the liabi incurred by persons entering into them, see further, p. 83, *ante*.

By "The Companies Act, 1867," s. 25, *post*, every shareholde liable for the full amount of his shares in cash unless the same sha otherwise determined by a contract, duly made in writing, and filed the Registrar of Joint-Stock Companies.

Holders of fully paid-up Shares.

A holder of fully paid-up shares in a Company, although indebt the Company, cannot be put on the list of contributories for the pu of enforcing payment of the debt: (*Re Marlborough Club Com* Law Rep. 5 Eq. 365.)

As to the liability of a subscriber of the Memorandum of Associ for paid-up shares to be made a contributory in respect of these sh see *Re South of France Company, Baron de Beville's case* (Law Rep. 11), p. 80, *ante*.

The directors of a Company redeemed at a discount a debentu the Company held by H., a director, two years before it was pay and allowed H. to set off the redemption-money against a call ther on his shares. Two months afterwards the Company was ordered wound-up by the court, and H. sought to avoid liability on the gr that his shares were fully paid up. It was held that the set-off not be allowed, and that the shares were not fully paid up, tha remained liable to pay the call, and should be placed on the l contributories in respect of his shares "paid in part:" (*Re Masons' Tavern Company, Habershon's case*, Law Rep. 5 Eq. 286.)

Scripholders.

Where a Company's articles make a distinction between men and scripholders, a scripholder will not be made liable as a contrib if his name is not entered on the register.

The Articles of Association of a Company provided that the dire instead of entering allottees of shares on the register of members, issue to them scrip certificates entitling the holders to the shares th named, subject to the payment of the instalments at the time th mentioned, and that the word "shareholder" should include scriph that the shares for which scrip was issued should be transferab delivery of the scrip, and the holder of the scrip should be the person recognised as entitled to the shares, and that the scriphold surrendering his scrip should be entitled to be entered on the re of members in respect of the shares mentioned in the scrip certif

The Company being wound-up, it was held that a scripholder was not a contributory: (*Re Littlehampton, Havre, and Honfleur Steamship Company, Ormerod's case*, Law Rep. 5 Eq. 110.)

Invalid Transfers.

A petition, presented by shareholders to wind-up a Company, was dismissed, upon condition that the Company paid the costs of all parties to the petition; and upon the suggestion of the court a committee was appointed to investigate the affairs of the Company. The committee reported that it would be for the benefit of the shareholders that the Company should go on, and that a voluntary loan should be obtained from the shareholders. B., a large shareholder, was dissatisfied with the report, and with the statement of accounts upon which it was founded, and he informed the directors that unless a *bonâ fide* purchaser was obtained for his shares, and his other claims against the Company were satisfied, he would present another petition to wind-up the Company. After some negotiations an officer of the Company took a transfer of the shares, representing, as B. alleged, that he purchased them on his own account. In fact, he purchased them at the instance of the directors, and by means of money belonging to the Company, and no *bonâ fide* purchaser could be obtained. It was held that B.'s name should be placed upon the list of contributories: (*Re Consols Insurance Association, Benham's case*, 11 Jur. N. S. 381, Ch.; 12 L. T. N. S. 224.)

In *Clack's case* (W. N. 1866, p. 275), where a scheme was formed by one Company to purchase the business of another Company, and the scheme was altogether *ultra vires*, and the dissentient shareholders in the purchasing Company transferred their shares to its secretary, and received back the money they had paid on their shares, the transferors were held to be contributories on the winding-up of the purchasing Company. On the subject of transfers generally, see p. 55, *et seq.*

(*b*) *With power to rectify the register of members in all cases where such rectification is required, &c.*]—In rectifying the register under this section it must be read in connection with sect. 35, *supra*.

In his judgment in *Sichell's case* (*Re Joint-Stock Discount Company*, Law Rep. 3 Ch. App. 122), Cairns, L. J., in refusing an application, by the official liquidator of a Company in course of liquidation, for the rectification of the register, observed, "In my opinion the reference in the 98th section to a rectification of the register cannot mean that the court in winding-up a Company is to rectify the register *ex mero motu*; it must mean that the court may exercise the judicial power conferred by the 35th section, having regard to who is the applicant, and to all the circumstances of the case, otherwise how could the court, according to the language of the 35th section, be satisfied of the justice of the case?"

See the cases under sect. 35, *supra*, as to the circumstances under which the court will order the register to be rectified.

The mere fact that a person's name is on the register is not enough to make him liable as a contributory. If he has not agreed to become a member of the Company (as to which see sect. 23, *supra*), he cannot be made a contributory, and is entitled to have his name removed from the register, however it may have been placed there.

B., without authority, applied on behalf of C., and as his agent, for shares in a Company, and C. was thereupon registered as a shareholder. On the shares being allotted, C. wrote to B. repudiating the transaction,

and asking him to "rectify the mistake." No steps were taken by and afterwards, on a call being made, B. wrote to the secretary of Company informing him of the mistake, and requesting that his n might be taken off the register. This was not done, and subsequently the Company being wound-up, C. applied to the court to have his n removed from the list of contributories. It was held that as C.'s n had been wrongfully placed on the register by no act of his own, an the Company were made aware of that fact, it devolved upon them, u sect. 35, *supra*, to have had it removed before the winding-up; bu this had not been done, C. was now entitled to its removal from th of contributories, and to costs from the liquidators: (*Re Patent Company, Ex parte White*, 16 L. T. N. S. 276.)

See, also, *Re Canadian Oil Company, Fox's case*, Law Rep. 5 Eq. But if a person's name is placed on the register of a Company, l ever wrongfully, and he allows it to remain, and does acts as a sh holder, he would probably be held bound by acquiescence; V. C. W touching on this point in *Chapman and Barker's case* (*Re Imp Mercantile Credit Association*, Law Rep. 3 Eq. 361), observed: ' important question might arise as to how far a person, after he kn that his name has been wrongly placed upon the register, may by of acquiescence—such as accepting a dividend or the like—be to be liable. It is like any other case, he cannot approbate and re bate. If for his own convenience he adopts the act, he must be li for the consequences of the act. The question whether he has, or not adopted it, is wholly one of degree and of evidence for the court

Removal of Transferor's Name.

If it were not for the above provision, and the powers conferre the act (sects. 131 and 153, *infra*), upon the court and the liquida in the respective cases of a winding-up by the court, and a volun winding-up, of permitting transfers of shares after the commencer of a winding-up, few questions could arise between the transferor transferee of shares, as to which was liable to be made a contribut The only persons liable would be those whose names were on register, and whatever claim for indemnity a registered shareho might have against a purchaser or transferee of his shares, he w have no right to demand that the latter, if not registered when winding-up commenced, should be placed on the list of contributo but as in the case of a trustee would be liable to contribute in res of the shares that stood in his name. The general principle is illustr by the following cases decided with regard to Companies not under act: (*Re Court Grange Silver Lead Company, De Castro's case*, 2 N. S. 1203; *Re Royal British Bank, Ex parte Walton, Ex parte* 3 Jur. N. S. 853; *Re Wrysgan Company, Humby's case*, 5 Jur. N. S. *Chartres' case*, 1 De G. & S. 581.)

Under the above provision, however, the court has jurisdictio alter the register after the winding-up has commenced, and ren names from, or enter them on it.

The principles on which the court acts, in deciding on applicat by transferors for the rectification of the register after a windin of the Company has commenced, were clearly laid down by the Ma of the Rolls in *Walker's case* (*Re Anglo-Danubian Steam Navigation Colliery Company*, Law Rep. 6 Eq. 30), as follows: "The very ob and purpose for which the act is framed, as shown by the clauses of act, is to enable you to guard against this particular emergency [*i.e.*,

transferor's name being left on the register by the default of the Company], and to enable the transferor to take care that the Company shall make a proper entry in the register of the transfer of the shares. In cases where there has been no fault at all on the part of the transferor, and the fault is merely that of the Company, the court directs the transfer to be made, or the register to be amended, thus doing what ought to have been done. When there has been no fault on either side the register remains as it was—when the fault is on both sides, the register also remains as it was."

In the following cases, which have already been referred to, the transferor of shares who was on the register at the time of winding-up was held liable as a contributory: (*Re London, Hamburg, and Continental Bank, Ward and Henry's case* (Law Rep. 2 Ch. App. 431, reversing S. C. Law Rep. 2 Eq. 226); *Re Contract Corporation, Head's case and White's case* (Law Rep. 3 Eq. 84, 86); *Re Joint-Stock Discount Company, Shepherd's case* (Law Rep. 2 Ch. App. 16, affirming S. C., 2 Eq. 564); *Re Imperial Mercantile Credit Association, Marino's case* (Law Rep. 2 Ch. App. 596; 36 L. J. Ch. 468; 16 L. T. N. S. 368); *Re Overend, Gurney and Company, Musgrave and Hart's case* (Law Rep. 5 Eq. 193); *Re English Joint-Stock Bank, Marzetti's case* (W. N. 1866, 399); *Re London, Hamburg, and Continental Exchange Bank, Emmerson's case* (Law Rep. 1 Ch. App. 433, reversing S. C. Law Rep. 2 Eq. 231); *Re Overend, Gurney and Company, Walker's case* (Law Rep. 2 Eq. 554); *Re Joint-Stock Discount Company, Read's case* (Parrish's shares), (36 L. J. Ch. 472; W. N. 1867, p. 114); *Re Anglo-Danubian Steam Navigation and Colliery Company, Walker's case* (Law Rep. 6 Eq. 30); *Re Joint-Stock Discount Company, Shipman's case* (Law Rep. 5 Eq. 219).

In the following cases the transferor was held not a contributory, and the name of the transferee was substituted for his: *Re Joint-Stock Discount Company, Nation's case* (Law Rep. 3 Eq. 77); *Re Overend, Gurney, and Company, Ward and Garfit's case* (Law Rep. 4 Eq. 189); *Re General Floating Dock Company* (W. N. 1867, p. 27); *Re Joint-Stock Discount Company, Reed's case* (Smallbone's shares), (W. N. 1867, p. 114; 36 L. J. Ch. 472); *Hill's case* (W. N. 1867, p. 137); *Colonial and General Gas Company* (W. N. 1867, p. 118).

Where a transfer of shares in a Company has been made with perfect *bona fides* on both sides, and has been registered, but there has been some defect in the form of the transfer, the question arising upon that is not one which the official liquidator of the Company has a right to bring forward, in order to rectify the register of shareholders by striking off a name that is upon it. The question being simply one between the transferor and transferee: (*Re General Floating Dock Company*, 15 L. T. N. S. 526, Ch.; W. N. 1867, p. 27.) In his judgment in this case, the Master of the Rolls observed that the mere omission of the transferee to sign a transfer (this was the defect in the form of the transfer) which was *bonâ fide*, and had been registered before the commencement of the winding-up, would not entitle either the liquidator or the parties themselves to have the register altered.

On an application under this and sect. 35, *supra*, to rectify the register of shareholders, the court will have regard to who is the applicant; and where, owing to the default of the Company, a transfer has not been registered before the winding-up, the court will not rectify the register on the application of the official liquidator, whatever may be the right of the transferor to have it rectified, for the official liquidator in such a case represents only the Company, to whose default the error is owing, the body of contributories having no interest in the question except

through the Company, and the creditors having no direct equity ag a person whose name has never been held out to them: (*Re Joint-Discount Company, Sichell's case*, Law Rep. 3 Ch. App. 119.)

Although there may have been unnecessary delay on the part Company in registering a transfer of shares, no order for the rect tion of the register can be made under this or the 35th section, o application of a transferor who is also in default, after the Compan been ordered to be wound-up.

A shareholder in a Company resisted an action for calls on the gr of alleged misrepresentations contained in the prospectus, and brought an action against the promoters and directors to recover mc previously paid in respect of shares. Both actions were, with the tion of the Company, compromised, one term of the compromise l that the shares should be transferred to one of the directors. A tra was accordingly executed by the shareholder and the transferee, deposited with the attorney, who acted for the Company and the d tors in the actions, but no further steps were taken in the matter. two years after the Company was ordered to be wound-up. It was that the shareholder whose name remained on the register was a co butory; *Fox's case* (see next case) being held distinguishable or ground, that in it the court determined that Fox ought never to been registered as a shareholder: (*Re Anglo-Danubian Steam Navig and Colliery Company, Walker's case*, Law Rep. 6 Eq. 30.)

A shareholder, being in a position to file a bill against a Com to have his name removed from the register, wrote to the secr declining to have anything further to do with the Company, and questing that his deposit might be returned. The deposit was retu but his name remained on the register of shareholders. Eigh months afterwards, on the Company being ordered to be wound-u was held not to be a contributory: (*Re Canadian Native Oil Comp Fox's case*, Law Rep. 5 Eq. 118.)

A shareholder in a Company executed a *bonâ fide* transfer of shar it to a broker, who did not then disclose the name of the real transf A petition was afterwards presented to wind-up the Company, the usual advertisements thereon duly issued; after which a que arose between the parties as to who was the real transferee of the sh A motion was then made on behalf of the transferor of the shares, w name was on the list of contributories, to remove his name, an insert the name of the broker instead. It was held that the nam the transferor must remain on the list; that the question between parties could only be decided on a suit regularly instituted; and the broker was not entitled to his costs of the motion: (*Re Lo and Hamburg Bank, Ex parte Watkins*, 14 L. T. N. S. 696; W. N. p. 219.)

Where a shareholder applied to have his name removed from the of contributories on the ground of variance between the prospectus the Memorandum and Articles of Association, and it appeared tha was acquainted with the circumstances which he said entitled hi have his name removed nearly twelve months before his applica and had submitted to have calls made on him, his application refused with costs: (*Re Accidental and Marine Insurance Corpora Davis's case*, W. N. 1866, pp. 363 and 406, on appeal.)

Where a registered Memorandum of Association differs from prospectus on which it professes to be founded, and on whicl setting forth the true objects of the association, a person has

shareholder, though, on discovering the difference, he may repudiate his shares, he cannot, after the failure of the Company, relieve himself from liability to contribute to the debts of the association on the ground that he has been ignorant of something which, with proper diligence, he might have known. It is the duty of a person taking shares in a Company to use reasonable diligence in making himself acquainted with the provisions of the Memorandum of Association. He must take the consequences of neglect.

A. applied on the faith of statements in a prospectus for shares in a Company. They were allotted. His name was put on the register of shareholders. At the end of nine months the Company failed, and was ordered to be wound-up. A. then applied to have his name removed from the list of contributories; and it was held, affirming the decision of Malins, V. C. (Law Rep. 3 Eq. 576), that it could not be removed from the list: (*Oakes* v. *Turquand and Harding*, *Re Overend, Gurney, and Company*, Law Rep. 2 H. L. 325.)

See, also, *Kent* v. *Freehold Land and Brickmaking Company*, Law Rep. 3 Ch. App. 493.

As to the manner in which a winding-up affects the right to rescind a share-taking contract, either on the ground of fraud or a variance between the prospectus and memorandum, see sect. 23, *supra*.

99. *Provision as to representative contributories.*—In settling the list of contributories(*a*) the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of(*b*) or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit.

(*a*) *In settling the list of contributories.*]—For the practice as to settling the list of contributories, see clauses 29—31 of General Order, 1862, *post*.

(*b*) *As being representatives of, &c.*]—As to representative contributories, see sects. 76—78, *supra*.

100. *Power of court to require delivery of property.*—The court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustees, receiver, banker, or agent, or officer (*a*) of the Company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects (*b*) which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled.

(*a*) *The court may require any contributory, &c., or officer, &c.*]—The court will not, under this section, make an order *ex parte* for the delivery

over of documents by the manager of a Company to the official li dator: (*Re Commercial Union Wine Company*, 35 Beav. 35.)

Where a judgment-creditor of a Company had obtained a garni order (under the 61st section of "The Common Law Procedure A 1854) attaching a sum of money belonging to the Company, in the h of their bankers, and the sum attached was paid to him by the garni after the presentation of a petition for winding-up the Company, before the winding-up order, the court held that it had no jurisdic to make an order under this section for repayment of the money tc Company, on the ground that the creditor was a trustee for the C pany, as the terms used in the section could not be intended to meet case of a person holding money on a merely constructive trust, and creditor had possession of the money as payment of his debt, no any express trust for the Company: (*Re United English and Scotch Assurance Company, Ex parte Hawkins*, Law Rep. 3 Ch. App. 787.)

The directors of a provisionally registered railway Company pai solicitors employed by the Company a sum of money in respect of bill of costs, which was not then delivered, and which, when delive fell short of the sum paid. The balance was claimed by the assig of another solicitor, who had acted jointly with the former in respe certain extra costs not included in the bill; and the first-menti solicitors also claimed a lien in respect of subsequent costs; it was irrespectively of those claims, that the balance was not in the han the solicitors as "agents or trustees" for the Company, so as to jurisdiction to the master under the corresponding section (sect. 6 11 & 12 Vict. c. 45: (*Hollingsworth's case*, 3 De G. & S. 102.)

So where the sharebrokers of a provisionally registered Company, were also holders of shares, had borrowed of the directors part of Company's moneys, to enable them to complete a purchase of shar the market, and had deposited as a security the purchased shares some of their original shares, it was held that the moneys borrowed not due from them as members and contributories of the Company, to authorise the master summarily to order them, in that characte pay the amount under that section: (*Re Tring, Reading, and Ba stoke Railway Company, Cox's case*, 3 De G. & S. 180; 19 L. J. Ch.

(*b*) *Effects, &c.*]—Where the official liquidator of a Company b wound-up, applied under this section for an order for the delivery u him by a railway Company of certain goods, which had been consi to them by the provisional liquidator, between the presentation of winding-up petition and the winding-up order, upon payment for carriage of the goods, the railway Company contended that, und special agreement between the two Companies, they were entitled general lien on the goods in their hands for the balance from tin time due to them on their general carriage account, and they cla to enforce this lien against the goods in question for sums falle on that account before the presentation of the winding-up peti it was held that the railway Company were entitled to the lien claimed, on the ground that the goods were consigned to them b provisional liquidator without notice of any intention to put an e the previous agreement, and the application was refused: (*Re Nort Iron and Steel Company*, W. N. 1866, p. 253; 14 L. T. N. S. 695.)

101. *Power of court to order payment of debts by tributory.*—The court may, at any time after making

order for winding-up the Company, make an order(*a*) on any contributory for the time being settled on the list of contributories,(*b*) directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the Company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this act; and it may, in making such order when the Company is not limited,(*c*) allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member(*d*) of the Company in respect of any dividend or profit:

Provided that when all the creditors(*e*) of any Company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

(*a*) *Make an order, &c.*]—For the form of the order, see General Order of November, 1862, 3rd schedule, Form 13, *post.*

(*b*) *Settled on the list of contributories.*]—A holder of fully paid-up shares cannot be put on the list of contributories for the purpose of obtaining an order against him under this section, for payment of money due by him to the Company: (*Re Marlborough Club Company*, Law Rep. 5 Eq. 365.)

(*c*) *When the Company is not limited.*]—The Master of the Rolls held that, in the absence of a special agreement, a contributory of a limited Company being wound-up by the court is debarred, by this section, from setting-off money due to him by the Company against money due by him on account of a call made before the winding-up; and his Lordship was of opinion that a Company has no power to contract with one of its members to give him such a right of set-off as that claimed: (*Re Breech Loading Armoury Company, Calisher's case*, Law Rep. 5 Eq. 214.)

See, also, *Re Richmond Hill Hotel Company, Pellatt's case*, Law Rep. 2 Ch. App. 527.

Although this section expressly excludes from its operation moneys due on account of calls made in the course of a winding-up, yet it has been held (*Re Overend, Gurney, and Company, Grissell's case*, Law Rep. 1 Ch. App. 528; 35 L. J. Ch. 752), on the general construction of the act, that the same principle applies in their case, and that a shareholder in a limited Company, who is also a creditor of the Company under a contract, is not, in the event of the Company being wound-up, entitled to set-off the debt due to him against the calls, or to set-off against the calls a dividend which may thereafter come to him. But upon payment

of all calls which have become due, he is entitled to receive dividend the same time and at the same rate with the other creditors.

See remarks on this case in *The Brighton Arcade Company* v. *Dou* (Law Rep. 3 C. P. 175), where it was held that the rule laid dow *Grissell's case* does not apply to the case of a voluntary winding-up.

As to the right of set-off where a shareholder has executed a of assignment under "The Bankruptcy Act, 1861," see *Re Duckw* Law Rep. 2 Ch. App. 578.

See, also, with respect to a contributory's right of set-off, *The Go and Moseley Gold Mining Company* v. *Sutton* (3 B. & S. 321), an *Moseley Green Coal and Coke Company, Ex parte Barrett* (12 L. T. N 193, Ch., on appeal). Both these cases were governed by stats. 19 Vict. c. 47, and 21 & 22 Vict. c. 60, now repealed. It is to be obse that this act contains no provision corresponding to sect. 17 of 21 Vict. c. 60.

It may be remarked that this section only has reference to the r of set-off as between a Company and its members. It has nothing t with dealings between a Company and persons not members of it, it seems the right of set-off in dealings of the latter kind is not affe by the Company being in progress of liquidation: (*Re Agra and Ma man's Bank, Anderson's case*, Law Rep. 3 Eq. 337.)

See, also, *Re Commercial Bank Corporation of India and the I Smith, Fleming, and Gledstanes' case*, Law Rep. 1 Ch. App. 538; 15 L N. S. 148, p. 183, *ante*.

(*d*) *Moneys due to him as a member, &c.*]—Compare with this, sect clause 7, *supra*.

(*e*) *Provided that when all the creditors, &c.*]—The Master of the R observed (*Calisher's case*, Law Rep. 5 Eq. 217), of this clause, that difficult to put an intelligible construction upon it consistently with decision of the Court of Appeal (see *Grissell's case*, Law Rep. 1 Ch. A 535), that the word "creditors" includes creditors who are also tributories.

102. *Power of court to make calls.*—The court may any time after making an order(*a*) for winding-up a C pany, and either before or after it has ascertained the su ciency of the assets of the Company, make calls on order payment thereof by all or any of the contributorie for the time being settled on the list of contributories,(*c* the extent of their liability, for payment of all or any su it deems necessary(*d*) to satisfy the debts and liabilities the Company,(*e*) and the costs, charges, and expense winding it up, and for the adjustment of the rights of contributories amongst themselves, and it may, in makin call, take into consideration the probability that some the contributories upon whom the same is made may pa or wholly fail to pay their respective portions of the sam

(*a*) *The court may at any time after making an order, &c.*]—The cou not obliged to put off making a call until the claims made again Company, which is in course of winding-up, have been establishe debts, even where these claims are likely to be contested. The Cou

Appeal will not, unless a strong case is made, interfere with the discretion of the judge to whose court the winding-up is attached, by reducing the amount of a call ordered by him: (*Re Contract Corporation*, Law Rep. 2 Ch. App. 95; 36 L. J. Ch. 69; 12 Jur. N. S. 931; 15 L. T. N. S. 201.)

As to the practice with regard to making calls on contributories in a winding-up, see General Order of November, 1862, clauses 33—35, *post.*

(*b*) *And order payment thereof by all or any of the contributories, &c.*]—Where the court postponed making a call, principally on the ground that a question was raised which affected the liability of a large number of contributories, and that the call should not be made pending the decision of the question, the Court of Appeal, although refusing to interfere with the discretion of the court below, strongly disapproved of the ground for postponing the call, and declared that it is the imperative duty of the court, to exercise the powers which are given by the act for the benefit of the creditors at the earliest possible period, having regard to the position in which the Legislature has placed them. And that persons on the list of shareholders of a Company in process of being wound-up, having thereby incurred a *primâ facie* legal liability, are not entitled to resist the making of a call on the ground that they assert a right to have their names removed from the list; but their remedy is to apply for the suspension of the operation of the call as against themselves: (*Re Barned's Banking Company*, 36 L. J. Ch. 215, on appeal; 15 L. T. N. S. 597; W. N. 1867, p. 25.)

A contributory was indebted to a Company for calls, and an order was made for the payment of them. A writ of *elegit* was afterwards duly sued out under the provisions of the 27 & 28 Vict. c. 112, and lands belonging to the contributory were delivered in execution to the official liquidator of the Company. The official liquidator then presented a petition praying an order for the sale of the lands, and payment out of the proceeds of such sale of the calls due from the contributory, and for other relief. It was held that there must be an inquiry, what interest the contributory had in the lands when they were delivered in execution to the official liquidator of the Company, and what other parties (if any) were interested in the lands; further consideration of the petition being reserved: (*Re Kirby, Ex parte the Official Liquidator of the Leeds Banking Company*, 14 L. T. N. S. 615.)

Where an application is made to the court to stay proceedings to enforce a call, for the purpose of enabling a shareholder to bring forward evidence in opposition to the call, the general rule is, that the amount of the call must be paid into court before the application will be granted: (*Re Overend, Gurney, and Company, Ex parte Oakes and Peeke*, W. N. 1866, p. 361.)

See, also, *Re Peninsular West Indian and Southern Bank, Jopp's case*, W. N. 1867, p. 192.

(*c*) *Settled on the list of contributories.*]—As to the making of calls where the list was improperly settled, see *Underwood's case* (5 De G. Mac. & G. 677).

(*d*) *For payment of all or any sums it deems necessary, &c.*]—"I quite think that if any error has been committed as to the mode of making or ascertaining the amount of the call, the error ought, if possible, to be corrected by the Court of Appeal; but to a very great extent the

quantum of call must be a matter that is to be left to the discre of the judge who has the conduct of the winding-up of the Comp from first to last:" (*Re Contract Corporation*, Law Rep. 2 Ch. App. Cairns, L.J.)

(*e*) *The debts and liabilities of the Company.*]—Turner, L. J., sidered that the section in speaking here of debts and liabilities, mus taken to mean estimated debts and liabilities: (*Re Contract Corpora* Law Rep. 2 Ch. App. 98.)

Where a Company is wound-up under this act, and calls have l made on the shareholders, interest after the date of the winding can be paid out of the calls, only on those debts which carry interes law.

The court refused to allow interest on the notes of a banking C pany where the notes were payable on demand, and no demand payment had been made before the Company was ordered to be wou up: (*Re Herefordshire Banking Company*, Law Rep. 4 Eq. 250.)

See, also, *Re State Fire Insurance Company, The Times Compa claim* (34 L. J. Ch. 58; 10 Jur. N. S. 1176), and *Re Hatfield Patent C Company* (2 N. R. 502; 11 W. R. 971).

103. *Power of court to order payment into bank.*—T court may order any contributory,(*a*) purchaser, or ot person from whom money is due to the Company to pay same into the Bank of England or any branch thereof the account of the official liquidator (*b*) instead of to official liquidator, and such order may be enforced in same manner as if it had directed payment to the offi liquidator.

(*a*) *The court may order any contributory, &c.*]—As to the enforcer of orders made by the Court of Chancery under this act, see sect. *infra*.

(*b*) *To the account of the official liquidator, &c.*]—Where an order been made on a contributory for payment of money into the bank to account of the official liquidator, and it is desired to enforce that o by issuing a writ of *fi. fa.*, the course prescribed by the 38th Ord November, 1862, must be followed, and an order obtained for payr of the sum in question to the official liquidator himself: (*Re L Banking Company*, Law Rep. 1 Ch. App. 150; 35 L. J. Ch. 311.)

104. *Regulation of account with court.* — All mon bills,(*a*) notes, and other securities paid and delivered i the Bank of England or any branch thereof in the even a Company being wound-up by the court, shall be sub to such order and regulation for the keeping of the acc of such moneys and other effects, and for the payment delivery in, or investment and payment and delivery ou the same as the court may direct.

(*a*) *All moneys, bills, &c.*]—On the subject of this section, see Ge Order of November, 1862, clauses 36—44.

105. *Provision in case of representative contributory not paying moneys ordered.*—If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering (*a*) the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereout of the moneys due.

(*a*) *Proceedings may be taken for administering, &c.*]—The official liquidator would take these proceedings under sect. 95 of this act.

A testator, who died in 1855, was a shareholder in a banking Company registered under 7 Geo. 4, c. 46, and had executed the deed of settlement, under which he had, for himself and his heirs, covenanted to perform the articles. The deed provided that the representative of a deceased proprietor might either sell the shares, or become a proprietor in respect of them, and have them transferred into his own name, in which case he should execute the deed, and on his neglecting to do so for three months after notice given to him, the directors might forfeit the shares.

The testator, by his will, appointed K. his executor, and bequeathed to him his residuary personal estate, including his shares, and gave his real estate to him and to other devisees.

K. did not sell the shares, which remained in the testator's name; he took no steps to become proprietor, and the dividends were paid to him, as executor. In 1864, the Company was ordered to be wound-up under this act, and K. was made a contributory. The official liquidator filed a bill on behalf of himself, and all other creditors of the testator, against K. and the devisees, for the administration of the testator's estate, and to enforce the calls against the real estate: it was held that the suit was properly instituted by the official liquidator under sect. 95, *supra*, by the general authority given by the court, without any special order: and also, that, notwithstanding the lapse of time since the testator's death, the real estate in the hands of the devisees was liable to the payment of the calls: (*Turquand* v. *Kirby*, Law Rep. 4 Eq. 123; 36 L. J. Ch. 570; 16 L. T. N. S. 260.)

106. *Order conclusive evidence.*—Any order made by the court in pursuance of this act upon any contributory shall, subject to the provisions herein contained (*a*) for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

(*a*) *Subject to the provisions herein contained, &c.*]—These provis are contained in sect. 124, *infra*.

107. *Court may exclude creditors not proving wit certain time.*—The court may fix a certain day or cer days on or within which creditors of the Company are to prove their debts or claims, or to be excluded fi the benefit of any distribution made before such debts proved.

(*a*) *On or within which creditors of the Company, &c.*]—Sect. *infra*, authorises the proof of debts of every description. As to practice with reference to the proof of debts, see the 20th and follo clauses of the General Order and Rules of November, 1862, *post*.

108. *Proceedings in the court of the vice-warden of the St naries on proof of debts.*—If in the course of proving debts and claims of creditors in the court of the v warden of the Stannaries any debt or claim is disputed the official liquidator, or by any creditor or contributory appears to the court to be open to question, the court s have power, subject to appeal as hereinafter provided to adjudicate upon it, and for that purpose the s court shall have and exercise all needful powers of inqu touching the same by affidavit or by oral examinatior witnesses or of parties, whether voluntarily offering th selves for examination, or summoned to attend by c pulsory process of the court, or to produce documents bel the court, and the court shall also have power, incidenta to decide on the validity and extent of any lien or cha claimed by any creditor on any property of the Compan respect of such debt, and to make declarations of ri binding on all persons interested; and for the more sa factory determination of any question of fact, or mi question of law and fact arising on such inquiry, the v warden shall have power, if he thinks fit, to direct and se any action or issue to be tried either on the common law s of his court, or by a common or special jury, before the tices of assize in and for the counties of Cornwall or De or at any sitting of one of the Superior Courts in Lon or Middlesex, which action or issue shall accordingly tried in due course of law, and without other or fur consent of parties; and the finding of the jury in s action or issue shall be conclusive of the facts found, un the judge who tried it makes known to the vice-war that he was not satisfied with the finding, or unless appears to the vice-warden that in consequence of mis

riage, accident, or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

(*a*) *Subject to appeal as hereinafter provided.*]—Sect. 124, *infra*, provides for an appeal from the court of the vice-warden of the Stannaries to the Court of Appeal in Chancery.

109. *Court to adjust rights of contributories.*—The court shall adjust the rights of the contributories amongst themselves,(*a*) and distribute any surplus that may remain(*b*) amongst the parties entitled thereto.

(*a*) *The rights of the contributories amongst themselves.*]—As to calls being made in a winding-up on partly paid-up shareholders in order to adjust the rights between them and the shareholders who have paid up in full, see *Re Anglesea Colliery Company* (Law Rep. 1 Ch. App. 555). As to the duty of the court in adjusting the rights of contributories, see *Re Marylebone Joint-Stock Bank* (25 L. J. Ch. 650), and *Ex parte Dayrell and Ex parte Lowndes* (1 Jur. N. S. 1129).

(*b*) *And distribute any surplus that may remain, &c.*]—A Company was formed in 1860 for working certain patents, the A. shareholders contributing all the capital, and the B. shareholders receiving paid-up shares as a consideration for the patents and the premises on which they were worked. The A. shareholders were to receive out of the profits the whole amount of their capital with interest at 7*l.* 10*s.* per cent. before the B. shareholders could participate in the profits. It was held, upon the winding-up of the Company, no profits having been realised, that there being a provision only for preferential dividend, and no provision as to the division of capital upon breaking up, that the surplus assets must be distributed between both classes of shareholders *pro ratâ*, without reference to their rights in respect of dividend: (*Re London Indiarubber Company*, Law Rep. 5 Eq. 519.)

110. *Court to order costs.*—The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges, and expenses incurred in winding-up any Company in such order of priority(*a*) as the court thinks just.

(*a*) *In such order of priority, &c.*]—The petitioner's costs are the first charge upon the property of the Company, and must be paid in full in priority to the rest of the costs, all of which are treated as the costs of the official liquidator: (*Re Audley Hall Cotton-Spinning Company*, Law Rep. 6 Eq. 245.)

111. *Dissolution of Company.*—When the affairs of the Company have been completely wound-up,(*a*) the court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

(*a*) *Have been completely wound-up.*]—As to the termination winding-up, see General Order of November, 1862, clauses 65—67

112. *Registrar to make minute of dissolution of Com* —Any order so made shall be reported by the official l dator to the registrar,(*a*) who shall make a minute ac ingly in his books of the dissolution of such Company.

(*a*) *To the registrar.*]—The Registrar of Joint-Stock Companies. constitution of his office is provided for by Part V. of this act.

113. *Penalty on not reporting dissolution of Compa* If the official liquidator makes default in reporting t registrar, in the case of a Company being wound-up b court, the order that the Company be dissolved, he be liable to a penalty(*a*) not exceeding five pounds for day during which he is so in default.

(*a*) *He shall be liable to a penalty, &c.*]—Sects. 65 and 66, *supra* vide for the recovery of penalties.

114. *Petition to be lis pendens.*—Any petition for win up a Company by the court under this act shall const a *lis pendens*(*a*) within the terms of the act passed i session holden in the second and third years of the rei Her present Majesty, chapter eleven, and intituled *A for the better Protection of Purchasers against Judgm Crown Debts, Lis pendens, and Fiats in Bankruptcy,* vided the same is duly registered in manner require such act concerning suits in equity.

(*a*) *Shall constitute a lis pendens, &c.*]—It has been held that thi tion did not authorise the registration of a petition for winding-u *lis pendens*, against the individual contributories: (*Re Barned's B Company, Ex parte Thornton*, Law Rep. 2 Ch. App. 171; 36 L. 190; 15 L. T. N. S. 523.)

This section of the act has been repealed by 30 & 31 Vict. c. 47.

EXTRAORDINARY POWERS OF COURT.

115. *Power of court to summon persons before it susp of having property of Company.*—The court may, after i made an order for winding-up the Company, summon b it (*a*) any officer of the Company or person known or pected to have in his possession any of the estate or e of the Company, or supposed to be indebted to the Com or any person whom the court may deem capable (giving information concerning the trade, dealings, es or effects of the Company; and the court may requir such officer or person (*c*) to produce any books, pa deeds, writings, or other documents in his custody or p

relating to the Company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien,(*d*) and the court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

(*a*) *The court may summon before it.*]—Sect. 117, *infra*, gives the court power to examine on oath the persons thus summoned before it. The examination is usually made before one of the examiners of the court, or a special examiner.

If the person summoned as a witness gives unsatisfactory answers, or refuses to produce documents required, he is liable to be committed. See *Re German Mining Company, Stone's case*, 3 De G. & S. 120.

When a person is examined, at the instance of the official liquidator, under this section, his counsel and solicitor are entitled to be present at the examination to examine the deponent when the examination on behalf of the official liquidator is concluded, and to take notes of the proceedings: (*Re Breech-Loading Armoury Company, Re Merchants' Company*, Law Rep. 4 Eq. 453; 17 L. T. N. S. 5, Ch.)

A witness summoned under this section must answer questions which refer to mere hearsay, since the object of the section is to enable the official liquidator to get full information as to all the Company's affairs, and hearsay may be valuable in putting him on the right inquiries; (*Re Ottoman Company*, 15 W. R. 1069; W. N. 1867, p. 164.)

The official liquidator of a Company in liquidation was held to be obliged to answer the questions put by an alleged contributory for the purpose of making out his case to be relieved from liability to the Company: (*Re Barned's Banking Company, Ex parte Contract Corporation*, W. N. 1867, p. 62, on appeal; Law Rep. 2 Ch. App. 350.)

B. was plaintiff in an action against a Company which was being wound-up. While the action was pending, certain contributories *subpœnaed* him as a witness before a special examiner in the matter of the winding-up, and proposed to examine him as to matters connected with the action, and it was held that the pendency of the action offered no reason why his examination should not be proceeded with, and a motion on his behalf to stay the examination was refused: (*Re Contract Corporation, Ex parte Bateman*, 15 L. T. N. S. 495, Ch., on appeal; W. N. 1866, p. 406.)

Where a solicitor, who had been present when certain securities had been delivered to his client, objected to answer the question "from whom the client received them," on the ground of privilege, as it was information obtained in the course of conducting his client's case, the objection was overruled on the ground that the information was not communicated by his client to the solicitor, but was the result of his own observation: (*Re Land Credit Society of Ireland*, 15 W. R. 703.)

An order was made, under this section, for the examinatio nesses before a special examiner as to the affairs of Compar course of liquidation. Before the winding-up, Company B. had amalgamated with Company C. (also in course of liquidation), validity of the amalgamation was in dispute between them. order in chambers, leave was given to the liquidator of the (pany to attend all proceedings in the winding-up of Company on the examination of the manager of the latter Company, rep tives of the C. Company attended and insisted on their right t examine the witness. Upon an application to the court to pre course attempted to be pursued by the representatives of the (pany, it was held that they had a right to attend and cross-exa their undertaking to abide by any order as to the costs of the examination, which the court might think fit to make, but th cross-examination should be strictly confined to the matters ari of the examination in chief: (*Re Empire Assurance Corporation*, N. S. 488.)

(*b*) *Any person whom the court may deem capable, &c.*]—V special examiner has been appointed, the proper mode of sum before the examiner "any person whom the court may deem ca giving information concerning the trade, dealings, estate, or effec Company, under this section," is, not by *subpœna*, but by sum chambers, a form of which is given in the 3rd schedule to the Order of November, 1862, Form 54, *post*: (*Re English Joint-Sto* Law Rep. 3 Eq. 203; 15 L. T. N. S. 206.)

The managing clerk of a bank in which a contributory has an is a witness compellable to answer as to that account, under this (*Re Financial Insurance Company*, 36 L. J. Ch. 687.)

And it has been held by the Court of Chancery Appeal that w may be summoned under this section to be examined concern "dealings, estate, and effects" of a Company, though no dire may have been raised, and that when a vice-chancellor has deer person capable of giving such information, within the meaning section, the Court of Appeal will be reluctant to interfere v decision.

A stockbroker, who had lodged a transfer of 823 shares in pany to an infant of limited means, was held to be a person " of giving information, &c.," and was ordered to attend and be e accordingly: (*Re Imperial Mercantile Credit Association*, *Ex parte* W. N. 1868, p. 102; 16 W. R. 769, Ch.)

See, also, *Re Mercantile Credit Association*, 37 L. J. Ch. 295.

A mere creditor of a Company who is not shown to be ca giving information concerning the trade, &c., of the Company, person to be examined under this section: (*Re Accidental and Insurance Corporation, Mercati's case*, Law Rep. 5 Eq. 22; 37 L 86; 17 L. T. N. S. 308.)

Where, on a summons in chambers to substitute the name of (tributory for another, the chief clerk refused to grant a summo this section to obtain further evidence, he was held to be wrong refusal, and a summons was ordered to issue directed to such pe the applicant should name as necessary witnesses: (*Re Overend, and Company, Ex parte Musgrave*, 16 L. T. N. S. 378, Ch.)

(*c*) *The court may require any such officer or person, &c.*]—Wher tributory disputed his liability to be placed on the list and calle

official liquidator of the Company in liquidation, to produce certain estimates and calculations respecting the assets of the Company which had been prepared with a view to making an application for a call, the court held that the documents should be produced, unless they were protected as confidential communications between solicitor and client: (*Re Barned's Banking Company, Ex parte Contract Corporation*, Law Rep. 2 Ch. App. 350.)

(*d*) *Such production shall be without prejudice to such lien.*]—There was no such provision as this in the corresponding section (sect. 63) of "The Joint-Stock Companies Act, 1848," upon which the case of *Re Oxford and Worcester, &c., Railway Company, Potter's case* (1 De G. & S. 728; 13 Jur. 691), was decided, in which the court would not order the production of documents so as to destroy or injure the lien of solicitors on them. Now, however, the case is different, and a solicitor who had documents belonging to a Company in course of liquidation, on which he claimed a lien, was ordered to produce them for inspection, though not to deliver them over to the official liquidator: (*Re South Essex Estuary and Reclamation Company, Ex parte Paine and Layton*, Law Rep. 4 Ch. App. 215; 17 W. R. 275.) On the subject of lien, see, also, *Re London, Brighton, and South Coast Railway Company*, Law Rep. 6 Eq. 325.

116. *Special provisions as to court of vice-warden of the Stannaries.*—If, after an order for winding-up in the court of the vice-warden of the Stannaries, it appears that any person claims property in or any lien, legal or equitable, upon any of the machinery, materials, ores, or effects on the mine, or on premises occupied by the Company in connection with the mine, or to which the Company was at the time of the order *primâ facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the act passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two; and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in his court or at the assizes or the sittings in London or Middlesex, before a judge of one of the Superior Courts, in the manner and on the terms and conditions hereinbefore provided (*a*) in the case of disputed debts and claims of creditors.

(*a*) *On the terms and conditions hereinbefore provided, &c.*]—This refers to sect. 108, *supra*.

117. *Examination of parties by court.*—The court may examine (*a*) upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

(*a*) *The court may examine, &c.*]—As to the course to be pursued such examination, see sect. 115, *supra*.

118. *Power to arrest contributory about to abscond, or to remove or conceal any of his property.*—The court may, at any time before or after it has made an order for winding-up a Company, upon proof being given(*a*) that there is probable cause for believing that any contributory(*b*) to such Company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books,(*c*) papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the court may order.

(*a*) *Upon proof being given, &c.*]—As to what is sufficient proof to induce the court to exercise the power conferred by this section, see *Re Imperial Mercantile Credit Company* (Law Rep. 5 Eq. 264), *infra*.

(*b*) *Any contributory.*]—This, of course, includes an alleged contributory; see sect. 74, *supra*.

(*c*) *Cause such contributory to be arrested, and his books, &c.*]—Upon evidence consisting of, an affidavit stating that it was commonly reported that a contributory was about to sell off his goods and chattels for the purpose of evading payment of a call, and a handbill advertising the immediate sale by auction, the court, reading the section as authorising a seizure of goods without an arrest of the person, made an order for the seizure of his books, papers, moneys, &c., but refused to order the arrest upon a mere hearsay statement of his intention to leave the United Kingdom: (*Re Imperial Mercantile Credit Company*, Law Rep. 5 Eq. 264.)

See, also, *Re Cotton Plantation Company of Natal*, W. N. 1868, p. 7. Where a contributory was in France, the court ordered that a writ of sequestration might issue without a prior writ of attachment: (*East England Bank, Re Hall*, 2 Drew. & Sm. 284.)

119. *Powers of court cumulative.*—Any powers by this act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity, of instituting proceedings (a) against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

(*a*) *Instituting proceedings, &c.*]—Any such proceedings should be instituted by the official liquidator; see sect. 95, *supra*.

ENFORCEMENT OF, AND APPEAL FROM, ORDERS.

120. *Power to enforce orders.*—All orders made by the Court of Chancery in England or Ireland under this act may be enforced in the same manner in which orders of such Court of Chancery made in any suit(*a*) pending therein may be enforced, and for the purposes of this part of this act the court of the vice-warden of the Stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such court, and for the last-mentioned purposes the jurisdiction of the vice-warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

(*a*) *Orders of such Court of Chancery made in any suit, &c.*]—Such orders are enforcible by attachment.

121. *Power to order contributories in Scotland to pay calls.*—Where an order, interlocutor, or decree has been made in Scotland for winding up a Company by the court, it shall be competent to the court in Scotland during session, and to the lord ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court or lord ordinary.

122. *Order made in England to be enforced in Ireland and Scotland.*—Any order made by the court in England for or in the course of the winding-up of a Company under this act shall be enforced(*a*) in Scotland and Ireland in the courts that would respectively have had jurisdiction in

respect of such Company if the registered office of Company had been situate in Scotland or Ireland, and the same manner in all respects as if such order had b made by the courts that are hereby required to enf the same; and in like manner orders, interlocutors, decrees made by the court in Scotland, for or in course of the winding-up of a Company shall be enfor in England and Ireland, and orders made by the court Ireland for or in the course of winding-up a Comp shall be enforced in England and Scotland by the co which would respectively have had jurisdiction in matter of such Company if the registered office of Company were situate in the division of the United Ki dom where the order is required to be enforced, and the same manner in all respects as if such order had b made by the court required to enforce the same in case of a Company within its own jurisdiction.

(*a*) *Shall be enforced, &c.*]—The next section prescribes the m of doing this.

123. *Mode of dealing with orders to be enforced by o courts.*—Where any order, interlocutor, or decree made one court is required to be enforced by another co as hereinbefore provided, an office copy of the order, in locutor, or decree so made shall be produced to the pro officer of the court required to enforce the same, and production of such office copy shall be sufficient evide of such order, interlocutor, or decree having been m and thereupon such last-mentioned court shall take s steps in the matter as may be requisite for enforcing s order, interlocutor, or decree, in the same manner a it were the order, interlocutor, or decree of the c enforcing the same.

124. *Appeals from orders.*—Rehearings of and app from any order or decision(*a*) made or given in the ma of the winding-up of a Company by any court hav jurisdiction under this act may be had in the same mar and subject to the same conditions in and subject to wl appeals may be had from any order or decision of same court in cases within its ordinary jurisdiction; sub to this restriction, that no such rehearing or appeal s be heard unless notice of the same is given within tl weeks(*b*) after any order complained of has been m in manner in which notices of appeal are ordinarily gi

according to the practice of the court appealed from, unless such time is extended(*c*) by the Court of Appeal: Provided, that it shall be lawful for the lord warden of the Stannaries, by a special or general order, to remit at once any appeal(*d*) allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding-up to the Court of Appeal in Chancery, which court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents, and papers as the lord warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the lord warden specified in the act of Parliament(*e*) passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two, and any order so made by the Court of Appeal in Chancery shall be final without any further appeal.

(*a*) *Appeals from any order or decision, &c.*]—As to the renewal of a motion after it had been refused, and the order made enrolled for appeal to the House of Lords, see *Re Overend, Gurney, and Company, Ex parte Oakes and Peek*, 36 L. J. Ch. 413.

On an appeal by the official liquidator against an order striking off the name of a contributory, leave was given to a shareholder to move to discharge the order: (*Re Scottish Universal Finance Bank, Ship's case*, 11 Jur. N. S. 254, Ch., on appeal; 12 L. T. N. S. 256.)

Leave was given, in *Re Wiltshire Iron Company, Ex parte Pearson* (Law Rep. 3 Ch. App. 443), to have an appeal reheard and to adduce fresh documentary evidence at the hearing, although no explanation was given why the documents had not been produced earlier. The court remarked, however, that an application to admit fresh documents, the genuineness of which can be tested with certainty, stands on a very different footing from an application to admit fresh parol evidence, after the pinch and pressure of the case has been sustained.

Where a contributory desired to appeal to the House of Lords, he was allowed to pay into court the money claimed by the official liquidator, to abide the result of his appeal, without being made to give security for costs: (*Re Peninsular, West Indian, and Southern Bank, Jopp's case*, W. N. 1867, p. 192.)

Where an appeal, on first coming on to be heard in the Court of Chancery Appeal, stood over without argument to await the decision in another case, substantially similar, then being heard before the House of Lords, and the decision of the House of Lords proving adverse to the appellant's case, he sought to have his appeal dismissed without costs, on the ground that the law was unsettled when his appeal was set down, the court held that the appeal must be dismissed with costs: (*Re Barned's Banking Company, Westland's case*, 37 L. J. Ch. 86.)

(*b*) *Unless notice of the same is given within three weeks, &c.*]—This restriction of appeals to those in which notice has been given within three weeks after the making of the order appealed from, does not apply to appeals from any order made on the original petition for winding-

up: (*Re Universal Bank*, Law Rep. 1 Ch. App. 428; 12 Jur. N. S. 4 14 L. T. N. S. 691.)

When the time limited for appeal has expired, the Court of Ap will not enlarge it upon an *ex parte* application, but will require n to be given to the intended respondent: (*Re Lama Italian Coal Comp* 16 L. T. N. S. 258, Ch.; W. N. 1867, p. 119.)

See, also, *Re North of England Joint-Stock Banking Company, Ex p Sanderson* (1 Hall & Twells, 486; 3 De G. & S. 66). This part of section is imperative: (*Ex parte Green*, 24 L. J. Ch. 331.)

(*c*) *Unless such time is extended.*]—Special or peculiar circumsta must be shown, to induce the Court of Appeal to exercise its p under this section of extending the time for appeal: (*Re Samuel Ba and Company, Ex parte Bastow and Company*, 37 L. J. Ch. 51.)

The Master of the Rolls refused an application by the liquidator Company, which was being wound-up voluntarily, for an injunctio restrain a creditor from selling goods of the Company which he taken in execution; and more than three weeks elapsed without liquidator giving notice of his intention to appeal. An injun having, in an analogous case, been granted by Vice-Chancellor Stu the liquidator applied for leave to appeal, notwithstanding the d and it was held by the Lords Justices, that the fact of a contrary dec in a different, though analogous, case having been pronounced l judge of co-ordinate jurisdiction, was not a ground on which the C of Appeal would exercise its discretion of extending the time for ap ing: (*Re Hull Forge Company, Ex parte Mitchell*, 36 L. J. Ch. 337 appeal; 15 W. R. 474.)

See, also, *Re Reese River Company, Ex parte Atwell*, W. N. 1867, p.

(*d*) *To remit at once any appeal, &c.*]—The general rules and or for regulating the practice, &c., on appeals to the lord warden, wi found, *post*.

(*e*) *The Act of Parliament, &c.*]—The section of this act which r lates appeals will be found, *post*.

125. *Judicial notice to be taken of signature of officers.* In all proceedings under this part of this act, all cou judges, and persons judicially acting, and all other offic judicial or ministerial, of any court, or employed in enforc the process of any court, shall take judicial notice(*a*) of signature of any officer of the Courts of Chancery or Ba ruptcy in England or in Ireland, or of the Court of Ses in Scotland, or of the registrar of the court of the v warden of the Stannaries, and also of the official seal stamp of the several offices of the Courts of Chanc or bankruptcy in England or Ireland, or of the Court Session in Scotland, or of the court of the vice-warde the Stannaries, when such seal or stamp is appended or impressed on any document made, issued, or sig under the provisions of this part of the act, or any off copy thereof.

(*a*) *Shall take judicial notice, &c.*]—The effect of this is that no p

shall be required where the documents purport to be signed by the proper officers.

126. *Special commissioners for receiving evidence.*—The commissioners of the Court of Bankruptcy and the judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this act in cases where any Company is wound-up in any part of the United Kingdom, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the court that made the order or decree for winding-up the Company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy, judge of a County Court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses,(*a*) and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

(*a*) *All the same powers of summoning and examining witnesses.*]—As to these powers, see sects. 115 and 117, *supra*.

127. *Court may order the examination of persons in Scotland.*—The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the Company or not, in regard to the estate, dealings, or affairs of any Company in the course of being wound-up, or in regard to the estate, dealings, or affairs of any person being a contributory of the Company, so far as the Company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon

such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

128. *Affidavits, &c., may be sworn in Ireland, Scotland, or the colonies before any competent court or person.*—Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this part of this act may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty, in foreign parts, before any court, judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions, and all courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such

affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this act.

VOLUNTARY WINDING-UP OF COMPANY.

129. *Circumstances under which Company may be wound-up voluntarily.*—A Company under this act(*a*) may be wound-up voluntarily,(*b*)

(1.) Whenever the period, if any, fixed for the duration of the Company by the Articles of Association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound-up voluntarily:

(2.) Whenever the Company has passed a special resolution(*c*) requiring the Company to be wound-up voluntarily:

(3.) Whenever the Company has passed an extraordinary resolution(*d*) to the effect that it has been proved to their satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same:

For the purposes of this act any resolution shall be deemed to be extraordinary(*e*) which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

(*a*) *A Company under this act.*]—A Company may be wound-up voluntarily, or under the supervision of the court, without being registered under this act, if it has been formed and registered under one of the former Joint-Stock Companies Acts, as it is then, under sects. 175 and 176, *infra*, to be deemed to be registered under this act: (*Re London Indiarubber Company*, Law Rep. 1 Ch. App. 329.)

(*b*) *Wound-up voluntarily.*]—As to the advantages and disadvantages of a voluntary winding-up, as compared with one by the court or under the supervision of the court, see the judgment of Wood, V.C., in *Re Inns of Court Hotel Company* (W. N. 1866, p. 348), and the judgment of Turner, L.J., in *Re National Savings Bank Association* (Law Rep. 1 Ch. App. 553).

(*c*) *A special resolution.*]—The manner of passing a special resolution is prescribed by sect. 51 of this act. The difference between this and an extraordinary resolution, referred to in the next clause, is, that a special resolution must be confirmed by a second general meeting, whereas an extraordinary resolution may be formally passed at the first meeting, but that meeting must be in strict accordance with all the provisions of sect. 51, *supra*.

After a special resolution had been passed (but not confirmed) for the voluntary winding-up of a Company, a shareholder petitioned for a compulsory winding-up order, alleging that the Company had been

got up for the purpose of improving the property bought by the Company, in order that it might revert in its improved condition to the person from whom it was bought, who held five times as many shares in the Company as all the other shareholders together.

The court, finding that there was a conflict between the parties, and that there were matters which required investigation, refused, on the ground of the preponderating influence of the single shareholder, to give effect to the resolution of the Company, and made the ordinary winding-up order: (*Re West Surrey Tanning Company*, Law Rep. 2 Eq. 737.)

But the court will not interfere, on the application of a shareholder or a minority of shareholders, unless the resolution was obtained by fraud, or by overbearing conduct, or by improper influence: (*Re Imperial Mercantile Credit Company*, 12 Jur. N. S. 739, Ch.)

See, also, *Re St. David's Gold Mining Company* (14 L. T. N. S. 539, Ch.), where the court would not allow the deliberate determination of a Company to wind-up voluntarily, to be upset by a few dissentient shareholders; *Re Beaujolais Wine Company* (Law Rep. 3 Ch. App. 15); *Re London and Mercantile Discount Company* (Law Rep. 1 Eq. 277); and *Re Bank of Gibraltar and Malta* (Law Rep. 1 Ch. App. 69).

It is, however, the general right of a creditor to have a Company wound-up by the court, although other creditors to a much larger amount desire a voluntary winding-up, and a meeting of the shareholders has been called to pass a resolution in favour of a voluntary winding-up: (*Re General Rolling Stock Company*, 34 Beav. 314; 11 Jur. N. S. 231, Ch.; 12 L. T. N. S. 9.)

(*d*) *Whenever the Company has passed an extraordinary resolution, &c.*] —See the observations of Turner, L. J., as to a resolution voluntarily to wind-up a Company: (*Re National Savings Bank Association*, Law Rep. 1 Ch. App. 55.)

(*e*) *For the purposes of this act, any resolution shall be deemed to be extraordinary, &c.*]—The notice of a meeting to pass such an extraordinary resolution should state the substance of the resolutions to be proposed, as nearly as possible in the terms used in the section, and a notice may be quite sufficient for the purpose of passing a resolution requiring confirmation, and yet be insufficient for the purpose of passing a resolution requiring no confirmation.

Notice was given of an extraordinary meeting of shareholders in a Company, "for the purpose of considering, and, if so determined on, of passing, a resolution to wind-up the Company voluntarily." The meeting passed a resolution "that it had been proved to the satisfaction of the Company that the Company could not, by reason of its liabilities, continue its business; and that it was advisable to wind-up the same." No meeting was ever called to confirm the resolution. The Lords Justices held (reversing the decision of the Master of the Rolls), that this resolution was invalid as an extraordinary resolution under this section, the notice not showing that it was intended to propose a resolution that the Company was unable, by reason of its liabilities, to continue its business, nor containing anything to show that it was proposed to pass such a resolution for winding-up the Company as would not require confirmation by a subsequent meeting: (*Re Bridport Old Brewery Company*, Law Rep. 2 Ch. App. 191; 15 L. T. N. S. 643.)

130. *Commencement of voluntary winding-up.*—A voluntary winding-up shall be deemed to commence at the time

of the passing of the resolution (*a*) authorising such winding-up.

(*a*) *At the time of the passing of the resolution, &c.*]—Where a voluntary winding-up is resolved upon, under sect. 129, cl. 2, *supra*, by means of a preliminary and a confirmatory resolution, the commencement of the winding-up dates from the passing of the second resolution: (*Re China Steam Ship Company, Dawes' case*, Law Rep. 6 Eq. 232.)

See, also, *Re Ottoman Company, Hornby's case* (W. N. 1868, p. 207), and *Re Smith, Knight, and Company, Weston's case* (Law Rep. 4 Ch. App. 20).

As to the effect of a voluntary winding-up on the status of a Company, see the next section.

131. *Effect of voluntary winding-up on status of Company.*—Whenever a Company is wound-up voluntarily (*a*) the Company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, (*b*) except transfers made to or with the sanction of the liquidators, (*c*) or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue (*d*) until the affairs of the Company are wound-up.

(*a*) *Whenever a Company is wound-up voluntarily, &c.*]—Sect. 153, *infra*, corresponds to this section with regard to a winding-up by the court, or under the supervision of the court.

(*b*) *All transfers of shares, &c.*]—This section only makes the transfer of shares, without the sanction of the liquidator, void, and not illegal; consequently, where a shareholder contracts to execute a transfer of his shares, he will not be protected from liability on his contract by the fact that a voluntary winding-up has supervened before the contract is completed. See *Biederman* v. *Stone* (Law Rep. 2 C. P. 504; 36 L. J. C. P. 198; 16 L. T. N. S. 415), p. 57, *ante*.

Where a stockbroker filed a bill in equity against his principal to compel the latter to accept a transfer of certain shares which had been purchased for him, and a voluntary winding-up commenced before a decree was made in the suit, it was held that the plaintiff was entitled to a decree, and that, notwithstanding this section, the decree could not be impeached on the ground of its ordering the defendant to procure, so far as possible, the shares to be transferred and registered in his name. Chelmsford, L.C., observing, "It may be that the liquidator may, under this section, have the power of refusing, and may refuse to sanction the transfer; but that is no reason why the court may not order the thing to be done if it is possible": (*Robins* v. *Edwards*, W. N. 1867, p. 197; 15 W. R. 1065.)

Speaking of this, and the 153rd section, *infra*, Christian, L. J. (Irish Chancery Appeal), in his judgment in *Sheppard* v. *Murphy* (16 W. R. 948), said: "Their aim was to protect the creditors of an insolvent Company and the general body of the shareholders, by arresting the

share register in the condition in which it was found at the commencement of the winding-up, so as to prevent unfair tampering with the body of directors; but the very circumstance, that the intervention of this act disables the vendor from divesting himself of the powers incident to the legal ownership of the shares, would entitle him to claim relief in equity. The cases of *Taylor* v. *Stray*, *Stray* v. *Russell*, *Chapman* v. *Sheppard*, *Biederman* v. *Stone*, *Hutchinson's case* and *Wood's case*, with others that might be mentioned, are authorities to show that in this case winding-up did not in the least prevent the respondent from being the owner of the shares."

(*c*) *The sanction of the liquidators.*]—This section gives no power to the liquidators beyond that of sanctioning a transfer of shares to themselves, or to another person, and where a forfeiture of shares has been validly made by the directors of a Company, before the commencement of a voluntary winding-up, the liquidators have no power under it to cancel such forfeiture. Accordingly, where the directors of a Company had forfeited the shares of D. for non-payment of calls after the passing of a preliminary resolution to wind-up, and before its confirmation (*i. e.* before the commencement of the winding-up), and the liquidators had subsequently agreed with D. to cancel the forfeiture, it was held that the forfeiture was valid; that the liquidators had no power to cancel it, and that D. could not be made a contributory: (*Re China Steam Ship Company*, *Dawes' case*, Law Rep. 6 Eq. 232.)

In like manner, where a transfer of shares was completed after the passing of a preliminary resolution to wind-up, but before its confirmation, the transfer was held to be valid: (*Re Ottoman Company*, *Hornby's case*, W. N. 1868, p. 207.)

(*d*) *But its corporate state and all its corporate powers shall continue, &c.*]—Where a bill was filed in equity impeaching certain preliminary proceedings which had been taken for the purpose of winding-up and reconstituting a Company, it was held that the fact of the Company having been wound-up subsequently, was no ground for staying the proceedings: (*Seaton* v. *Grant*, Law Rep. 2 Ch. App. 459.)

132. *Notice of resolution to wind-up voluntarily.*—Notice of any special resolution or extraordinary resolution passed for winding-up(*a*) a Company voluntarily shall be given by advertisement as respects Companies registered in England in the *London Gazette*, as respects Companies registered in Scotland in the *Edinburgh Gazette*, and as respects Companies registered in Ireland in the *Dublin Gazette*.

(*a*) *Resolution passed for winding-up.*]—The notice provided for here is to be given after the resolution has passed, and the winding-up has commenced.

133. *Consequences of voluntarily winding-up.*—The following consequences shall ensue upon the voluntary winding-up of a Company.

(1.) The property of the Company shall be applied(*a*) in satisfaction of its liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the

regulations of the Company, be distributed amongst the members according to their rights and interests in the Company:(*b*)

(2.) Liquidators shall be appointed for the purpose of winding-up the affairs of the Company,(*c*) and distributing the property:

(3.) The Company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator,(*d*) and may fix the remuneration to be paid to them or him:

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(5.) Upon the appointment of liquidators all the power of the directors shall cease,(*e*) except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers:

(6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them(*f*) as may be determined at the time of their appointment, or in default of such determination by any number not less than two:

(7.) The liquidators may, without the sanction of the court,(*g*) exercise all powers by this act given to the official liquidator:

(8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the Company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

(9.) The liquidators may at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories(*h*) for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves,(*i*) and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(10.) The liquidators shall pay the debts of the C pany,(*j*) and adjust the rights of the contributo amongst themselves.

(*a*) *The property of the Company shall be applied, &c.*]—This m that the assets of the Company must be applied in satisfaction *pari p* of the liabilities of the Company, as they exist at the commence of the winding-up.

Where, prior to the winding-up of a Company, a dividend had paid under an inspectorship deed to some creditors of the Company, not to others, it was held that there being no question of fraud preference, those who had not received any dividend were not ent to a dividend under the winding-up, in priority to those who l (*Re Smith, Knight, and Company, Ex parte Ashbury*, Law Rep. 5 Eq. 2 The Master of the Rolls, in his judgment, speaking of this clause, s "It does not mean that the court shall look into fresh transactions, equalise all the creditors by making good to those who have not rece anything, a sum of money equal to that which other creditors l received. It takes them exactly as it finds them, and divides the a among the creditors, paying them their dividend on their debts as then exist. If anything has been paid beforehand, that must deducted from the amount of the proof."

After a Company has resolved to wind-up voluntarily, creditors be restrained from levying execution on it, as it would render the al provision quite nugatory if a creditor were allowed to seize the wl or an undue share of the assets of the Company for his own benefit. creditor, who commenced an action, and signed judgment after a r lution (of which he had notice) passed and duly confirmed to wim voluntarily, was restrained from issuing execution: (*Re Sablonière I Company*, Law Rep. 3 Eq. 74; 15 L. T. N. S. 238.)

Compare with this case, however, that of *Re Bank of Hindu China, and Japan, Ex parte Levick and others* (Law Rep. 5 Eq. 69), the same Company, *Ex parte Smith* (Law Rep. 3 Ch. App. 125).

See, also, *Re Peninsular, &c., Banking Company* (35 Beav. 280) *Keynsham Company* (33 Beav. 123; 9 Jur. N. S. 885), and *Re Life A ciation of England* (10 Jur. N. S. 762).

A Company established under the Limited Liability Act 1856 (19 Vict. c. 47), borrowed money upon debentures, which charged the s upon "all the lands, tenements, and estate" of the Company, all their "undertaking." Upon the Company being wound-up vo tarily, it was held, as between the simple contract creditors of Company and the debenture holders, that the debentures did not inc arrears of unpaid calls, or moneys to arise from future calls: (*Kin Marshall*, 34 L. J. Ch. 163.)

See *The Brighton Arcade Company* v. *Dowling* (Law Rep. 3 C. P. 37 L. J. C. P. 125), as to the right of set-off in an action by a Com against a contributory for calls, in a voluntary winding-up.

(*b*) *Amongst the members according to their rights and interests in Company.*]—For the principle on which the surplus assets shoul distributed among shareholders of different classes, see *Re Sci Punjaub, and Delhi Bank Corporation*, W. N. 1867, p. 76.

See, also, *Re London Indiarubber Company*, Law Rep. 5 Eq. 519.

(*c*) *For the purpose of winding-up the affairs of the Company.*]—It

been held that the voluntary winding-up of a bank ought not to prevent the holders of its notes and drafts, current at the time of the stoppage, from making a demand for payment; and where a claim for interest on notes and drafts was sent by the holders in to the liquidators, that was held to be a sufficient presentation and demand for payment according to the law of merchants, and that interest at the rate of 5 per cent. should be allowed from the date when each claim was sent in: (*Re East of England Banking Company*, Law Rep. 4 Ch. App. 14.)

(*d*) *The Company in general meeting shall appoint liquidators or a liquidator.*]—Where a meeting is held to appoint liquidators, due notice should be given that their appointment is to be proposed at such meeting.

At an extraordinary general meeting of a Company, resolutions were passed for the voluntary winding-up of the Company, and for the appointment of a liquidator.

The notice, which under Table B., clause 28, of the Companies Act (19 & 20 Vict. c. 47), had been previously given of the meeting, stated that the object of the meeting was the voluntary winding-up of the Company, but it omitted to mention that a liquidator was at the same time to be appointed. It was held that the appointment of the official liquidator was bad in consequence of the notice, which convened the meeting, not stating that it was the purpose of the meeting to appoint a liquidator: (*Re Stearic Acid Company*, 9 Jur. N. S. 1066; 8 L. T. N. S. 759, Ch.)

The deed of settlement of a joint-stock Company, registered under the acts of 1856, 1857, provided that every general meeting, whether ordinary or extraordinary, should be called by advertisement, and that such advertisement should express the object of such meeting, or the business proposed to be transacted thereat, and that no other business should be transacted at an extraordinary general meeting than the business for which it should have been expressly called. The deed did not contain any provisions for the winding-up of the Company. It was held that liquidators for the winding-up of the Company, under the acts of 1856, 1857, could not be appointed at a meeting convened for the purpose of proposing a resolution to wind-up the Company voluntarily; and that it was immaterial that the Company was established before the passing of those acts: (*Anglo-Californian Gold Mining Company* v. *Lewis*, 6 H. & N. 174; 30 L. J. Ex. 50.)

See, also, *Re Inns of Court Hotel Company*, W. N. 1866, p. 348.

It has been held, that where the contributories did not at the proper time exercise their right of appointing a liquidator, it became the duty of the court to appoint one, and an appointment having been made, that the Court of Appeal ought not to interfere with the discretion of the judge who had made it: (*Re London Quays and Warehouses Company*, Law Rep. 3 Ch. App. 394, *post.*)

As to the importance of requiring from the liquidators in a voluntary winding-up sufficient security, and as to the impropriety of liquidators employing the money they receive for the purpose of making profit, see observations of the Master of the Rolls (W. N. 1866, p. 327).

The court has full power to remove a liquidator or liquidators under a voluntary resolution to wind-up: (*Re United Merthyr Collieries Company*, 16 L. T. N. S. 170, Ch.)

See sect. 141, *infra.*

(*e*) *Upon the appointment of liquidators all the power of the directors shall cease.*]—It has been held that the directors did not cease to be officers of

the Company on the commencement of a winding-up by the court, and tha they were, therefore, bound to answer interrogatories administered unde "The Common Law Procedure Act, 1854" (17 & 18 Vict. c. 125), s. 51 (*The Madrid Bank, Limited*, v. *Bayley*, Law Rep. 2 Q. B. 37.)

(*f*) *Every power hereby given may be exercised by such one or more o them, &c.*]—Where a Company is being wound-up, and several liqui dators are appointed, it is necessary, in accepting a bill on the part o the Company, that it should be signed by two or more of them, unles at the time of their appointment it be determined that the acceptanc by one should be sufficient.

Where the four liquidators of a Company resolved that one of ther should have power to accept bills, it was held that this, as a genera authority, would not be sufficient under this section which require the signature of two liquidators, but that the four liquidators migh authorise any one to sign any particular bill.

Bills accepted by one liquidator in pursuance of this resolution wer held to be invalid against the Company, but the holders of the bill were allowed to claim as creditors for money advanced: (*Re London an Mediterranean Bank, Ex parte Birmingham Banking Company*, Law Rep 3 Ch. App. 651.)

(*g*) *The liquidators may, without the sanction of the court, &c.*]—Sect. 9 of this act prescribes the powers of the official liquidator.

Where an action brought by liquidators in a voluntary winding-up under supervision fails, execution by the defendant for costs will not b restrained: (*Re Bank of Hindustan, China, and Japan, Ex parte Levic and others*, Law Rep. 5 Eq. 69.)

As to a contract made by a liquidator for the sale of property of a Company in liquidation, see *Re Colonial and General Gas Company* W. N. 1867, p. 42.

(*h*) *Call on all or any of the contributories, &c.*]—See sect. 75 of thi act, and the case of *Re Overend, Gurney, and Company, Ex parte Lintot* (Law Rep. 4 Eq. 184; 36 L. J. Ch. 510; 16 L. T. N. S. 228) under it.

See, also, *Re Overend, Gurney, and Company, Barrow's case* (Law Rep 3 Ch. App. 784).

In an action for calls by the liquidator of a Company being volun tarily wound-up, the defendant may set-off a debt due to him from th Company, and sect. 101 of this act has been held not to apply t the case of a voluntary winding-up; but it is no defence to such a action that the liquidator omitted to give notice to the defendant, tha he was to be put on the list of contributories, previous to his being placed thereon: (*The Brighton Arcade Company* v. *Dowling*, Law Rep 3 C. P. 175; 37 L. J. C. P. 125.)

See, also, *Re London Bank of Scotland*, W. N. 1867, p. 114.

(*i*) *For the adjustment of the rights of the contributories amongst themselves.*]—A holder of fully paid-up shares is a "contributory" within th meaning of the act. Therefore, where, under a voluntary winding-up all debts had been provided for, it was held (affirming the decisio of Wood, V.C.) that the liquidators were justified in making a call upo the partly paid-up shareholders for the purpose of adjusting the right between them and the fully paid-up shareholders: (*Re Anglesea Colliery Company*, Law Rep. 1 Ch. App. 555; 35 L. J. Ch. 809; 15 L. T. N. S. 127.)

Even after three months had expired from the date of the registratio of the return of a meeting, held under sects. 142 and 143 of this act,

call was ordered to be made, for the purpose of adjusting the rights of fully paid-up and partly paid-up shareholders: (*Re Crookhaven Mining Company*, Law Rep. 3 Eq. 69; 36 L. J. Ch. 226.)

(*j*) *The liquidators shall pay the debts of the Company, &c.*]—As to claims against a Company being wound-up under this act, see sect. 158, *infra*.

134. *Effect of winding-up on share capital of Company limited by guarantee.*—Where a Company limited by guarantee,(*a*) and having a capital divided into shares, is being wound-up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the Company, and to be a specialty debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

(*a*) *A Company limited by guarantee, &c.*]—Sect. 9, *supra*, explains the meaning of the expression "limited by guarantee."

See, also, sect. 90, *supra*.

135. *Power of Company to delegate authority to appoint liquidators.*—A Company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, may, by an extraordinary resolution,(*a*) delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

(*a*) *By an extraordinary resolution.*]—As to the mode of passing an extraordinary resolution, see sect. 129, *supra*.

136. *Arrangement when binding on creditors.*—Any arrangement entered into between a Company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, and its creditors, shall be binding on the Company if sanctioned by an extraordinary resolution,(*a*) and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal (*b*) as is hereinafter mentioned.

(*a*) *An extraordinary resolution.*]—As to the mode of passing an extraordinary resolution, see sect. 129, *supra*.

(*b*) *Subject to such right of appeal, &c.*]—The right of appeal is provided for by the next section.

137. *Power of creditor or contributory to appeal.*—A creditor or contributory of a Company that has manner aforesaid entered into any arrangement with creditors may, within three weeks from the date of completion of such arrangement, appeal to the court against such arrangement, and the court may thereu as it thinks just, amend, vary, or confirm the same.

(*a*) *Appeal to the court.*]—For a definition of "the court," sect. 81, *supra*.

The mode of applying under this section is prescribed by the Ge Order of November, 1862, clause 51, *post*.

138. *Power for liquidators or contributories in volun winding-up to apply to court.*—Where a Company is be wound-up voluntarily the liquidators(*a*) or any contribut of the Company(*b*) may apply(*c*) to the court(*d*) in Engl Ireland, or Scotland, or to the lord ordinary on the l in Scotland in time of vacation, to determine any ques arising in the matter of such winding-up,(*e*) or to exerc as respects the enforcing of calls, or in respect of any ot matter, all or any of the powers(*f*) which the court mi exercise if the Company were being wound-up by court; and the court or lord ordinary, in the case af said, if satisfied that the determination of such quest or the required exercise of power, will be just and benefi may accede, wholly or partially, to such application, such terms and subject to such conditions as the c thinks fit, or it may make such other order, interlocutor decree on such application as the court thinks just.

(*a*) *The liquidators.*]—A single liquidator, if there be only one, apply under this section, see *Re Metropolitan and Provincial* (W. N. 1867, p. 199), where a liquidator applied to have an a stayed that was brought against him by his co-liquidator.

A liquidator, who has allowed a claim against the Company unc voluntary winding-up, ought not, in consequence of objections on part of some of the shareholders, to bring the matter himself befor court under this section, but should leave the dissentient shareholde do so if they choose: (*Re Licensed Victuallers and General Plate Insurance Company, Ex parte Wesson*, 15 W. R. 917; W. N. 1867, p. 17 L. T. N. S. 8.)

(*b*) *Any contributory of the Company, &c.*]—Where a compromise been effected by a liquidator and adopted (under sect. 159) by Company, it was considered by Rolt, L. J., that a contributory not entitled under this section to have the whole question reope and the propriety of the compromise determined, as if the Company being wound-up by the court, and as if the Company had not in me approved of the compromise: (*Re Lama Company, Miller's case*, 16 L N. S. 726, Ch., on appeal; Law Rep. 2 Ch. App. 692.)

Where a contributory, from whom calls were due, took out a summons under this section objecting to the mode in which the liquidator had settled the list of contributories, it was held that the contributory had a right to see that the list was rightly settled, and for that purpose to inspect, by his solicitor and an accountant, the books and documents of the Company, but before doing so he should pay the amount of his calls into court; his summons to be dismissed if he failed to point out any errors in the list: (*Re London Bank of Scotland, Ex parte Collum*, W. N. 1867, p. 114.)

(*c*) *May apply.*]—As to the mode of making the application, see clause 51 of the General Order, 1862, *post.*

(*d*) *The court.*]—Where any proceedings in a voluntary winding-up have once been taken before a particular branch of the court, all subsequent proceedings in the same matter must be before the same judge: (*Re Alexandra Printing Ink Company*, W. N. 1868, p. 66.)

(*e*) *To determine any question arising in the matter of such winding-up.*]—The jurisdiction given by this section is of a summary character, and where the questions to be determined involved charges of misapplication of moneys against directors, the court refused to exercise it, or to send the case into chambers with a view to the investigation of these questions: (*Re Bank of Gibraltar and Malta*, Law Rep. 1 Ch. App. 69.)

See, also, the reference to this section in the judgment of Wood, V. C., in *Re London and Mercantile Discount Company*, Law Rep. 1 Eq. 277.

On an application for the court's confirmation of an agreement, made between the liquidators of a Company in the course of being voluntarily wound-up and another Company, and which had been objected to under sect. 161 of this act, the court, on its appearing that such agreement was fit and proper, and for the benefit of the Company, granted, under this section, the order asked for: (*Re Scinde, Punjaub, and Delhi Bank Corporation*, 15 L. T. N. S. 602, Ch.; W. N. 1867, p. 41.)

(*f*) *All or any of the powers which the court might exercise, &c.*]—Under this section the court has jurisdiction to stay actions by creditors against the Company. Upon granting an injunction to stay an action by a creditor against a Company, during a voluntary winding-up, the court required the liquidators to give the creditors access to the proceedings, and give to the creditor his costs down to the time he had notice of the winding-up: (*Re Keynsham Company*, 33 Beav. 123; 9 Jur. N. S. 885, Ch.)

Where a creditor brought an action against a Company, which afterwards resolved voluntarily to wind-up, on an application by the Company, it was held that all further proceedings in the action must be stayed upon the creditor being allowed to prove for his debt and the costs of the action and of the application: (*Re Life Association of England*, 34 L. J. Ch. 64; 12 L. T. N. S. 43.)

If the action had been commenced after notice of the resolution to wind-up, the costs would not have been allowed.

As to which, see also *Re East Kent Shipping Company*, W. N. 1868, p. 206.

Where the liquidator, in a voluntary winding-up, applied for a writ of *ne exeat* (see sect. 118) against a contributory who was indebted to the Company in respect of arrears of calls, and who was alleged to be about to abscond from the country, the court, although not doubting its jurisdiction, refused the application on the ground that the liquidator must

bring an action and recover judgment before the writ could be gran (*Re Cotton Plantation Company of Natal*, W. N. 1868, p. 79.)

139. *Power of liquidators to call general meeting.*—Wl a Company is being wound-up voluntarily the liquida may, from time to time, during the continuance of s winding-up, summon general meetings of the Company the purpose of obtaining the sanction of the Comp by special resolution (*a*) or extraordinary resolution, (*b*) for any other purposes they think fit; and in the ev of the winding-up continuing for more than one year, liquidators shall summon a general meeting of the Comp at the end of the first year, and of each succeeding y from the commencement of the winding-up, or as s thereafter as may be convenient, and shall lay before s meeting an account showing their acts and dealings, and manner in which the winding-up has been conducted dur the preceding year.

(*a*) *Special resolution.*]—As to the manner of passing a sp resolution, see sect. 51, *supra*.

(*b*) *Extraordinary resolution.*]—As to the manner of passing an ex ordinary resolution, see sect. 129, *supra*.

140. *Power to fill up vacancy in liquidators.*—If vacancy occurs in the office of liquidators appointed by Company, by death, resignation, or otherwise, the Comp in general meeting may, subject to any arrangement t may have entered into (*a*) with their creditors, fill up s vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing liquidat if any, or by any contributory of the Company, and shall deemed to have been duly held if held in manner prescri by the regulations of the Company, or in such other man as may, on application by the continuing liquidator, if a or by any contributory of the Company, be determined the court.

(*a*) *Subject to any arrangement they may have entered into, &c.*]—W the case of a vacancy taking place is provided for in such arrangem the office must be filled in accordance therewith.

141. *Power of court to appoint liquidators.*—If from a cause whatever there is no liquidator acting in the case o voluntary winding-up, the court may, on the applicatior a contributory, (*a*) appoint a liquidator, (*b*) or liquidato the court may also, on due cause shown (*c*) remove

liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

(*a*) *On the application of a contributory.*]—As to the mode of making an application under this section, see General Order of November, 1862, cl. 51, *post.*

(*b*) *Appoint a liquidator, &c.*]—As to the court appointing a liquidator in a voluntary winding-up under supervision, see *Re London Quays and Warehouses Company*, Law Rep. 3 Ch. App. 394.

(*c*) *On due cause shown.*]—The court thus has power to remove a liquidator appointed in a voluntary winding-up on due cause shown, but only for cause shown; and, unless cause is shown, the liquidator appointed must continue to hold the office. See the judgment of Cairns, L.J., in *Re London Quays and Warehouses Company*, Law Rep. 3 Ch. App. 400.

But see *Re Marseilles Extension Railway and Land Company*, Law Rep. 4 Eq. 692.

142. *Liquidators on conclusion of winding-up to make up an account.*—As soon as the affairs of the Company are fully wound-up,(*a*) the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the Company disposed of; and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects Companies registered in England in the *London Gazette*, and as respects Companies registered in Scotland in the *Edinburgh Gazette*, and as respects Companies registered in Ireland in the *Dublin Gazette*.

(*a*) *The affairs of the Company are fully wound-up.*]—As to the time when the affairs of a Company should be deemed to have been fully wound-up, see *Re Crookhaven Mining Company*, Law Rep. 3 Eq. 69; 36 L. J. Ch. 226; 12 Jur. N. S. 872.

143. *Liquidators to report meeting to registrar.*—The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months(*a*) from the date of the registration of such return the Company shall be deemed to be dissolved: if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

(*a*) *And on the expiration of three months, &c.*]—The court has jurisdiction to make an order in the matter of the voluntary winding-up of

a Company under this act, after the expiration of three months from the date of the registration of a return by the liquidators of a meeting having been held in pursuance of the last section, if the application for such order is made before the expiration of the three months: (*Re Crookhaven Mining Company*, Law Rep. 3 Eq. 69; 36 L. J. Ch. 226; 12 Jur. N. S. 872; 15 L. T. N. S. 169.)

In his judgment in this case, the Master of the Rolls said, "It is unnecessary that I should go into the question whether the 143rd section of the statute deprives the court of its jurisdiction over a Company, which, under the provisions of that section, is deemed to be dissolved. I am inclined to think that it was not the intention of the Legislature by any provision of this statute, which was intended to provide a less expensive and more speedy and direct method of winding-up Companies, to fetter the jurisdiction of the court and compel parties to resort to more circuitous and expensive remedies."

144. *Costs of voluntary liquidation.*—All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

145. *Saving of rights of creditors.*—The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound-up by the court,(*a*) if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

(*a*) *To have the same wound-up by the court.*]—See sect. 86, *supra*. See, also, *Re Manchester Queensland Cotton Company* (16 L. T. N. S. 583, Ch.; W. N. 1867, p. 192), and *Re United Service Company* (Law Rep. 7 Eq. 76).

Where a resolution for the voluntary winding-up of a Company had been duly made, it was considered by Turner, L.J., very doubtful whether it was within the jurisdiction of the court to make an order for winding-up by the court on the application of contributories: (*Re Bank of Gibraltar and Malta*, Law Rep. 1 Ch. App. 73.) See *Re London and Mediterranean Bank*, 15 L. T. N. S. 153.

146. *Power of court to adopt proceedings of voluntary winding-up.*—Where a Company is in course of being wound-up voluntarily, and proceedings are taken for the purpose of having the same wound-up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound-up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings (*a*) taken in the course of the voluntary winding-up.

(*a*) *Provide for the adoption of all or any of the proceedings, &c.*]—It is doubtful whether the court has jurisdiction to adopt the proceedings in a voluntary winding-up, when the Company is not registered under this act, and the resolution for winding-up was passed after the act came into operation.

An opposing shareholder, who was not served with the petition, but who appeared by counsel and successfully opposed the adoption of the voluntary proceedings, was allowed his costs: (*Re Minima Organ Company*, 8 L. T. N. S. 109, Ch.)

See, also, *Re Cumberland Black Lead Mining Company, Ex parte Bell* (6 L. T. N. S. 197), and *Re Anglo-Californian, &c., Company, Ex parte Baldy* (10 W. R. 309).

WINDING-UP SUBJECT TO THE SUPERVISION OF THE COURT.

147. *Power of court, on application, to direct winding-up, subject to supervision.*—When a resolution has been passed by a Company to wind-up voluntarily, the court may make an order (*a*) directing that the voluntary winding-up should continue, but subject to such supervision of the court, and with such liberty for creditors, contributories, (*b*) or others, to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just.

(*a*) *The court may make an order.*]—Where the voluntary winding-up of a Company is ordered to be continued, subject to the supervision of the court, the winding-up must be deemed to commence from the date of the resolution to wind-up voluntarily (*i. e.* where there were two resolutions from the date of the second or confirmatory one), and not from the presentation of the petition on which the order is founded: (*Re Smith, Knight, and Company, Weston's case*, Law Rep. 4 Ch. App. 20.)

See, also, *Hodgkinson* v. *Kelly*, Law Rep. 6 Eq. 496.

The court has an absolute discretion as to making an order under this section. As to the circumstances by which the court is to be guided in exercising that discretion, Turner, L. J., thus expressed himself in *Re Bank of Gibraltar and Malta* (Law Rep. 1 Ch. App. 73): "I think that, in determining the question whether such an order should be made or not, we must look to the facts on which the application for the order is grounded, and consider whether those facts present a case rendering it proper that the order should be made with a view to putting in force some of the provisions of the act, which would be available if the order were made, but would not be available under a mere voluntary winding-up." The case then before the court was on a contributory's petition, alleging breaches of trust and misconduct on the part of the directors of the Company; the grounds were deemed to be insufficient, and the petition was dismissed.

See, also, *Re London Bank of Scotland*, 15 W. R. 1103.

Inasmuch as a voluntary winding-up must be the result of a properly convened meeting of a Company, at which all the contributories may attend and state their views (see *Re London Flour Company*, W. N. 1868, p. 84), and which, in the absence of evidence to the contrary, may be presumed to have taken the best course open to it for the interests of the Company, the court will not at the instance of contributories interfere with a voluntary winding-up, by ordering a winding-up, by or under the supervision of the court, except where the resolution for winding-up voluntarily, has been obtained by fraud, or by an inequitable overbearing of the rights of a dissentient minority by improper influence: (*Re London and Mercantile Discount Company*, Law Rep. 1 Eq. 277; 35 L. J. Ch. 229; 13 L. T. N. S. 665.)

See, also, *Re St. David's Gold Mining Company* (W. N. 1866, p. 196), to the same effect, and *Re Beaujolais Wine Company* (W. N. 1867, pp. 139, 281; Law Rep. 3 Ch. App. 15.)

Where the proceedings in a voluntary winding-up, under the act of 1856, were dilatory and unsatisfactory, and had not come to a conclusion at the end of five years, the court, upon the petition of a shareholder, directed a winding-up under the court: (*Re Fire Annihilator Company*, 32 Beav. 561.)

See, also, *Re United Merthyr Collieries Company* (16 L. T. N. S. 170, Ch.), and *Re Imperial Bank of China, India, and Japan* (Law Rep. 1 Ch. App. 339.)

Where a Company is being wound-up voluntarily, and a petition is presented for a winding-up under the supervision of the court, it is necessary to serve not only the liquidator but the Company; and when the Company had no office or place of business when the petition was presented, the court ordered that service on nine subscribers to the memorandum of association, who were the only persons that had acted as directors, should be deemed service on the Company: (*Re Inventors' Association*, 13 W. R. 1015.) See, also, *Re Panonia Leather Cloth Company* 13 W. R. 1015, n.)

See *Re Alexandra Hall Company* (W. N. 1867, p. 67), as to an informality in the winding-up order under this section.

(*b*) *With such liberty for creditors, contributories, &c.*]—Where parties are dissatisfied with the course of proceedings taken in chambers, in obedience to an order for the voluntary winding-up of a Company under the supervision of the court, the proper course for such parties to take is to proceed by way of summons in chambers, to regulate the proceedings there, and not to present a petition for a compulsory winding-up order: (*Re London and Mediterranean Bank*, 15 L. T. N. S. 153, Ch.)

But see *Re Aldborough Hotel Company*, 15 W. R. 390.

148. *Petition for winding-up, subject to supervision.*—A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, (*a*) be deemed to be a petition for winding-up the Company by the court. (*b*)

(*a*) *For the purpose of giving jurisdiction over suits and actions.*]—Therefore the courts may grant an injunction under sect. 85, *supra*, restraining proceedings against the Company.

(*b*) *Shall be deemed to be a petition for winding-up the Company by the court.*]—By sect. 151, *infra*, any order made by the court for a winding-up subject to the supervision of the court shall for all purposes be deemed to be an order for winding-up the Company by the court.

As to petitions for winding-up by the court, and orders made on them, see sects. 82 and 86, *supra*.

149. *Court may have regard to wishes of creditors.*—The court may, in determining whether a Company is to be wound-up altogether by the court, or subject to the super-

vision of the court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories(*a*) as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the Company.

(*a*) *The court may have regard to the wishes of the creditors or contributories, &c.*]—See the remarks of Wood, V. C., in *Re London and Mercantile Discount Company* (Law Rep. 1 Eq. 284), with regard to this section.

The Agra and Masterman's Bank having stopped payment, an order was made for a voluntary winding-up under supervision. On an application to the court for its approval of a scheme adopted by the majority of shareholders and creditors, for the resuscitation of the bank by the transfer of its assets to a new Company, the court being of opinion that everything had been fairly laid before the shareholders and creditors, and that the success of the new bank was entirely a matter of speculation, thought itself bound to follow the view of the majority, and sanctioned the arrangement: (*Re Agra and Masterman's Bank*, 15 L. T. N. S. 408, Ch.)

A Company passed a resolution for a voluntary winding-up. Before the meeting to confirm it, a petition was presented by contributories praying for a compulsory winding-up, or, in the alternative that, if the resolution should be confirmed, the winding-up might be continued under the supervision of the court. This petition was ordered by the Master of the Rolls to stand over till after the confirmatory meeting should have been held, and his Lordship expressed an opinion that the Company ought not to appoint any liquidator, and required an undertaking accordingly. At the meeting the previous resolution was confirmed, but no liquidator was appointed. The petition came on again, and a supervision order was made, and the Master of the Rolls subsequently selected, out of several persons nominated for the office of liquidator, the one who was supported by the smallest number of contributories. A motion was afterwards made by some contributories, and supported by a large majority of the contributories, that the liquidator should be removed, or additional liquidators appointed to act with him, but it was not alleged that the person appointed was in any respect an improper person. This motion having been refused by the Master of the Rolls, it was held, upon appeal, that as the contributories did not at the proper time exercise their right of appointing a liquidator, it became the duty of the court to appoint one, and, an appointment having been made, the Court of Appeal ought not to interfere with the discretion of the primary judge. The court refused to appoint an additional liquidator, upon the ground that, there being a very hostile feeling between the parties, such an appointment, if one liquidator were

appointed would lead to litigation and expense, and if more than one were appointed, would lead to the person originally appointed being outvoted. An order was made that the liquidator should conduct the winding-up subject to such restrictions as an official liquidator would in a compulsory winding-up be subject to, except so far as the court might, on application for that purpose, modify or dispense with such restrictions in any case or class of cases: (*Re London Quays and Warehouses Company*, Law Rep. 3 Ch. App. 394.)

The court would not allow itself to be influenced by the wishes of contributories where there was reason to believe that the meeting, which pretended to express those wishes, was not fairly constituted: (*Re National Savings Bank Association*, Law Rep. 1 Ch. App. 547.)

150. *Power to court to appoint additional liquidators in winding-up subject to supervision.*—Where any order is made by the court for a winding-up subject to the supervision of the court, the court may, in such order or in any subsequent order appoint any additional liquidator or liquidators;(*a*) and any liquidators so appointed by the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the Company: The court may from time to time remove any liquidators so appointed by the court, and fill up any vacancy occasioned by such removal, or by death or resignation.

(*a*) *Appoint any additional liquidator or liquidators.*]—For observations on appointing an additional liquidator or liquidators, see the judgments in *Re London Quays and Warehouses Company* (Law Rep. 3 Ch. App. 394).

151. *Effect of order of court for winding-up subject to supervision.*—Where an order is made for a winding-up subject to the supervision of the court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the court,(*a*) exercise all their powers, without the sanction or intervention of the court, in the same manner as if the Company were being wound-up altogether voluntarily; but, save as aforesaid, any order made by the court for a winding-up subject to the supervision of the court shall for all purposes, including the staying of actions, suits, and other proceedings,(*b*) be deemed to be an order of the court for winding-up the Company by the court, and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised(*c*) if an order had been made for winding-up the Company altogether by the court, and in the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liqui-

dators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the court.

(*a*) *Subject to any restrictions imposed by the court.*]—See *Re London Quays and Warehouses Company* (Law Rep. 3 Ch. App. 394), where an order was made that the liquidator should conduct the winding-up, subject to such restrictions as an official liquidator would in a compulsory winding-up be subject to, except so far as the court might, on application for that purpose, modify or dispense with such restrictions in any case or class of cases.

(*b*) *Including the staying of actions, suits, and other proceedings.*]—Where a suit was instituted by a shareholder in a Company, to restrain that Company from amalgamating itself with another Company, which, after the resolution for amalgamation, was ordered to be wound-up under supervision, the court, on summons, gave the plaintiff leave to proceed with his suit, on his undertaking not to enforce any decree he might obtain without the leave of the court: (*Re Marine Investment Company*, 17 L. T. N. S. 535.)

(*c*) *To exercise all other powers which it might have exercised, &c.*]—The shareholders in a mining Company within the jurisdiction of the Stannaries passed a resolution for a voluntary winding-up of the Company, and appointed two liquidators. A creditor presented a petition for a compulsory winding-up, upon which the vice-warden made an order directing the voluntary winding-up to continue under the supervision of the court, and substituting a new liquidator for one of those appointed by the resolution. It was held by Knight Bruce, L. J. (Turner, L. J., doubting), that the vice-warden had jurisdiction to remove the liquidator appointed by the shareholders: (*Re Old Wheal Neptune Mining Company, Ex parte Pulbrook*, 2 De G. J. & S. 348, on appeal.)

See, also, *Re Marseilles Extension Railway and Land Company*, Law Rep. 4 Eq. 692.

As to a contract made by a liquidator for the sale of property of a Company in liquidation, see *Re Colonial and General Gas Company*, W. N. 1867, p. 42.

152. *Appointment in certain cases of voluntary liquidators to office of official liquidators.*—Where an order has been made for the winding-up of a Company subject to the supervision of the court, and such order is afterwards superseded(*a*) by an order directing the Company to be wound-up compulsorily, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

(*a*) *Afterwards superseded, &c.*]—See *Re United Service Company*, Law Rep. 7 Eq. 76.

SUPPLEMENTAL PROVISIONS.

153. *Dispositions after the commencement of the winding-up avoided.*—Where any Company is being wound-up by the

court or subject to the supervision of the court all dispositions of the property,(*a*) effects, and things in action of the Company, and every transfer of shares,(*b*) or alteration in the status of the members(*c*) of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders,(*d*) be void.

(*a*) *All dispositions of the property, &c.*]—The object of this enactment is to prevent the improper alienation and disposition of the property of a Company *in extremis*, during the period which must elapse, before a petition to wind-up can be heard. But *bonâ fide* dispositions of property of a Company in the ordinary course of its trade, made after the presenting of a petition for winding-up, and completed before the winding-up order, will, as of course, in the exercise of the discretion given to the court by this section, be confirmed. Where, however, such dispositions are incomplete and rest in contract at the time of the winding-up order, the court has no discretionary power to order the contract to be fulfilled, and the person with whom it was entered into, though he has paid his money, has only a general claim as a creditor for damages in respect of the breach of contract.

Where a customer of a trading Company had *bonâ fide* ordered and paid for goods, and the Company had loaded the goods on a railway to his address and sent him the invoices, after the presenting of the petition, but before the winding-up order, it was held that the disposition of the property was complete before the winding-up order, and the goods were ordered to be delivered to the customer: (*Re Wiltshire Iron Company, Ex parte Pearson*, Law Rep. 3 Ch. App. 443.)

(*b*) *Every transfer of shares.*]—Although under this section, the court has a discretion to make valid any dealings with shares, between the presentation of a petition for winding-up and the order made upon it, it was held (reversing the order of the Master of the Rolls), that an agreement for the sale of shares in a Company, entered into in ignorance that a petition for winding-up the Company had been presented, was not enforcible or valid, so as to make the purchaser a contributory: (*Re London, Hamburg, and Continental Exchange Bank, Emmerson's case*, Law Rep. 1 Ch. App. 433; 12 Jur. N. S. 592; 14 L. T. N. S. 746.)

But the decision in this case, that the purchaser under the circumstances stated cannot be placed on the list of contributories, does not affect the question, whether the seller has a right to be indemnified by the purchaser from all liabilities on the shares contracted to be sold. With regard to this point, it has been held by the Court of Queen's Bench that this section does not invalidate a contract for the sale of shares made in the interval between the presentation of a petition and the order for a winding-up, nor prevent a transfer being made after the order has been made. The case was an action by a vendor of shares against the purchaser. The declaration alleged (first and fourth counts) that a Company under this act had been ordered, on the 17th of March, to be wound-up under the supervision of the Court of Chancery on a petition presented on the 7th of March; that after the commencement of the winding-up the plaintiff agreed to sell, and the defendant to buy, certain shares in the Company, the defendant to pay or indemnify the plaintiff from all calls thereafter to be made, whilst the defendant

should be entitled to the shares; breach, that the defendant had not paid nor indemnified the plaintiff against a subsequent call. Fifth count, that after the Company had been ordered to be wound-up, the plaintiff and defendant, on the 5th of April, upon the terms agreed on between them that the defendant should indemnify the plaintiff in respect of the shares, executed a deed of transfer, by which the plaintiff sold and transferred, and the defendant agreed to accept the shares, subject to the conditions on which the plaintiff then held them; breach, that a subsequent call had been made on the plaintiff which the defendant had not repaid the plaintiff. The defendant pleaded, to the first and fourth counts, that the plaintiff did not execute a transfer of the shares to the defendant. To all the counts, that at the time of the making of the agreement and deed the plaintiff knew of the petition and of the commencement of the winding-up, but the defendant was ignorant of them; that no sanction of the official liquidator or order of the court as to the sale or transfer of the shares had been obtained; that at the time of the making of the agreement and deed the plaintiff was not a member of the Company, nor registered as such, of which the defendant was ignorant; that the defendant had not been registered or made a member of the Company, and there had been no default on the part of the Company in omitting his name from the register; and that the defendant never made any express agreement to pay or indemnify the plaintiff against any calls made upon the shares. On demurrer to the pleas, it was held that the pleas were bad, and the counts good: (*Rudge* v. *Bowman*, Law Rep. 3 Q. B. 689.)

Blackburn, J., said, when delivering judgment in this case, "Unless there is some clause in the statute to the contrary, I can see no reason why the transfer of shares should not be registered after a winding-up order has been made." . . . . "If a man choose to speculate in the shares of a Company, being wound-up, on the chance of making a profit, and the holder is willing to sell, what is there in point of law forbidding such a bargain, or what is there in the statute which says that a bargain shall not take place? The seller would still remain a contributory, and there is no section in the statute which says a contributory may not bargain as to shares; nor do I see why one of the terms of the bargain should not be a contract of indemnity, not altering in any way the liability of the transfer or to the Company, but giving him a right of indemnity over against his vendee, if he be called upon by the Company to pay any call." . . . . "As to the allegation that the defendant has not been registered, there is no reason why he should not now be registered."

Mr. Justice Lush, in like manner, after observing that section 153 was the section which applied to the case, it being a winding-up under the supervision of the court, and that that section only makes a transfer void in the interval between the petition and the order, likened the case to *Burnett* v. *Lynch* (5 B. & C. 589), in which it was held that where an assignee of a lease accepted the assignment, subject to the terms of the original lease, there was an implied contract on his part to indemnify the lessee from all consequences of a breach of the covenants in the lease. So in the present case there was an express clause in the transfer that the defendant was to take the shares subject to the conditions on which the plaintiff held them.

The decision in this case shows that the courts will uphold the negotiability of shares and the efficacy of every contract to transfer them, except where there is an express statutory provision to the contrary, and strictly applicable to the precise point in question.

See, also, *Chapman* v. *Shepherd* (Law Rep. 2 C. P. 228; 36 L. J. C. P. 113; 15 L. T. N. S. 477), p. 57, *ante*, as to the position of a broker who has purchased for a customer shares which come under the operation of this section.

Where a Company executed a deed of transfer as a transferor of shares, and the winding-up of the Company commenced after the deed of transfer had been sent in for registration, but before it had been registered, it was held that the validity of the registration of the Company as shareholders was not affected by this section: (*Re Barned's Banking Company, Ex parte the Contract Corporation*, Law Rep. 3 Ch. App. 105.)

(*c*) *Or alteration in the status of the members.*]—The directors of a bank, then in an insolvent condition, proposed to their shareholders that the holders of 10*l.* shares, on which 7*l.* had been paid, should advance 3*l.* on this alternative: viz., if the bank should be able to go on the advance was to be treated as a loan at 10 per cent. interest; while, if the bank were wound-up, the advance was to be taken as paid upon shares in anticipation of calls. On the day this proposal was made a friendly petition was presented by one of the directors, on which (and also on two others) an order was ultimately made for winding-up the Company. It was held that the presentation of this petition rendered the arrangement come to on the same day invalid under this section, as being an "alteration in the status of the members of the Company made between the commencement of the winding-up and the order for winding-up;" and that shareholders who had made the advance, with full knowledge of the presentation of the petition, were not entitled to adopt the alternative of treating it as paid upon their shares in anticipation of calls: (*Re Oriental Commercial Bank, Barge's case*, Law Rep. 5 Eq. 420.)

(*d*) *Unless the court otherwise orders.*]—Where a Company's articles required that transfers of shares should be executed by the transferor and the transferee, and that the transferee should be approved of by the directors before the registration of the transfer, the court refused to exercise its discretion under this section, where these conditions had not been complied with: (*Re Overend, Gurney, and Company, Walker's case*, Law Rep. 2 Eq. 554; 35 L. J. Ch. 826)

154. *The books of the Company to be evidence.*—Where any Company is being wound-up, all books, accounts, and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence(*a*) of the truth of all matters purporting to be therein recorded.

(*a*) *Primâ facie evidence.*]—Where a liquidator charged persons in his books without giving them notice, the court ordered the entry to be removed, and threw upon the liquidator the onus of showing that such entry ought to be restored: (*Re Madrid and Valencia Railway Company, Ex parte Chadwick*, 15 Jur. 597.)

155. *As to disposal of books, accounts, and documents of the Company.*—Where any Company has been wound-up under

this act, and is about to be dissolved, the books, accounts, and documents of the Company and of the liquidators may be disposed of in the following way; that is to say, where the Company has been wound-up by or subject to the supervision of the court, in such way as the court directs, and where the Company has been wound-up voluntarily, in such way as the Company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

156. *Inspection of books.*—Where an order has been made for winding-up a Company by the court or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the court thinks just, and any books and papers in the possession of the Company may be inspected(*a*) by creditors or contributories in conformity with the order of the court, but not further or otherwise.

(*a*) *Any books and papers in the possession of the Company may be inspected.*]—The books and papers of a Company are the property of its shareholders, who are entitled to inspect them, though there is a secrecy clause in the Articles of Association, and though in the course of inspection they will become acquainted with matters which should be kept secret. But it is their duty not to divulge such information so acquired; and the court will restrain them by injunction from so doing, and will punish them should they offend: (*Re Birmingham Banking Company, Ex parte Brinsley*, 36 L. J. Ch. 150; 15 L. T. N. S. 203.)

'In an action by a Company against an alleged shareholder for calls under a winding-up order, the court upheld the order of a judge at chambers giving liberty to the defendant, after plea, to inspect the registry of shares, the allotment and *agenda* books in the possession of the Company.

The granting such an order is purely in the discretion of the judge at chambers, and the court will not review his exercise of such discretion, unless they clearly see that the order was wrong: (*The Lancashire Cotton-Spinning Company* v. *Greatorex*, 14 L. T. N. S. 290, Ex.)

Where shareholders applied to the court for leave to inspect and take extracts from the books and papers of the Company, and to employ an accountant for that purpose, leave was granted subject to the limitation that only one inspection would be allowed to go on at once, that the inspection should be made at reasonable times, and that the contents of the documents should not be improperly disclosed: (*Re Joint-Stock Discount Company*, W. N. 1866, p. 341.)

157. *Power of assignee to sue.*—Any person to whom any thing in action belonging to the Company is assigned, in pursuance of this act, may bring or defend any action or suit relating to such thing in action in his own name.

158. *Debts of all descriptions to be proved.*—In the event of any Company being wound-up under this act, all debts payable on a contingency, and all claims against the Company, present or future, certain or contingent,(*a*) ascertained or sounding only in damages, shall be admissible to proof against the Company,(*b*) a just estimate being made, so far as is possible, of the value of all such debts or claims(*c*) as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(*a*) *All claims against the Company, present or future, certain or contingent, &c.*]—A Company was formed to carry on the business of a previously existing bank with limited liability, and the assets of the bank were handed over to the Company, and the business was thenceforward carried on in the name of the Company, which name differed but slightly from that of the bank. J. was a creditor of the bank in respect of a deposit at interest. No notice of the transfer of the business was sent to J., but the interest on his deposit was, in two successive half years after the transfer, sent by the Company to J.'s agents, and this payment was accepted by them. The Company then stopped, and was ordered to be wound-up. The letters, in which the interest was sent to the agents, were headed with the name of the Company, and spoke of the deposit being with them. J. carried in a claim for his deposit against the Company, and his claim was admitted by the official liquidator, and included in the chief clerk's certificate of the debts, and a dividend of 10*s.* in the pound was paid upon it. H., a contributory, afterwards moved to have J.'s claim expunged. It was held that J. had never accepted the Company as his debtors, and that his claim must be expunged, and that H. was not estopped, by reason of his knowledge of the objects for which the Company was formed, and of the fact that the assets of the bank were handed over to the Company from disputing the claim of J.: (*Re Commercial Bank Corporation of India and the East*, 17 W. R. 958; 18 L. T. N. S. 668.)

In the case of *Re Continental Bank Corporation, Ex parte London and County Bank* (W. N. 1867, p. 84), a debt transferred by one Company to another was held proveable against the first, although the creditor knew of the transfer, and had accepted interest from the transferee.

In the voluntary winding-up of a banking Company, the creditors on deposit claimed interest at 4½ per cent., being an increase on the previous rate, by virtue of a resolution passed by the directors shortly before the stoppage of the bank, but not communicated to the depositors, and of a subsequent letter from the liquidators to the effect that the increased rate would be allowed. It was held that the resolution of the directors, not having been communicated to the depositors, was inoperative, and that the liquidators had no power to make the bank liable for an increased rate of interest.

Interest was also claimed upon bank notes and drafts current at the

time of the stoppage, and it was held that the claim made to the liquidator was a sufficient presentation and demand for payment, according to the law of merchants, and interest at 5 per cent. was allowed from the date of the claim: (*Re East of England Banking Company*, Law Rep. 4 Ch. App. 14.)

As to a claim by bankers for the balance of an account with compound interest, see *Re Hereford Journal Company*, W. N. 1868, p. 135.

A person who has incurred liabilities as trustee for a Company has a right to be indemnified, in the winding-up of the Company, against such liabilities.

M. was registered as the owner of 100 shares in the T. Company, but he really held them as the nominee and trustee of the N. Company, and had executed a declaration of trust to that effect. Both the Companies being in liquidation, calls to a large amount were made upon M. in respect of the shares, which calls he did not pay. It was held, on his application (affirming an order of Stuart, V.C.), that M. was entitled to rank as a creditor of the N. Company for the amount of the calls which had been made upon him and interest thereon, and also for any future calls on the same shares and interest thereon, he undertaking that the liquidator of the N. Company should be at liberty to pay over to the liquidator of the T. Company the dividends payable from time to time in the liquidation of the N. Company to M. in respect of the calls, and the liquidator of the T. Company consenting to accept what might be so paid, in full satisfaction of all claims against M. or his estate in respect of the 100 shares: (*Re National Financial Company, Ex parte Oriental Commercial Bank*, Law Rep. 3 Ch. App. 791.)

See, also, *Re Cefn Cilcen Mining Company* (Law Rep. 7 Eq. 88), as to the right of directors to prove against a Company for moneys paid on account of it.

Where stockbrokers were employed by the manager and certain directors of a Company, who had associated themselves together in a body called a "syndicate," for dealing in shares of the Company, to borrow money for them on the security of shares of the Company, and expended certain moneys in doing so, it was held that the brokers could maintain a claim for the money expended against the Company on the ground that, as no question as to the *bona fides* of the transaction arose, it was simply a question of indemnity, and that the rule that it is the duty of principals to indemnify their agents must prevail: (*Re Imperial Mercantile Credit Association, Ex parte Ionides*, W. N. 1867, p. 131.)

Servants of a Company, ordered to be wound-up under this act, are not on a different footing from other creditors, and are not entitled to payment in full in priority to other creditors, of any part of the wages or salary due to them at the date of the winding-up. They are entitled to prove for their salary on the footing of having had notice of discharge the day the winding-up order was made: (*Re General Rolling Stock Company, Chapman's case*, Law Rep. 1 Eq. 346.)

Where, however, the business is continued after the winding-up order, and the former servants are actually employed, the old contract between the Company and its servants continues in force, and notice of discharge must be given them in accordance with it: (*Re English Joint-Stock Bank, Harding's case*, Law Rep. 3 Eq. 341.)

See, also, *Re English Joint-Stock Bank, Ex parte Finney* (W. N. 1867, p. 97), as to a claim for salary by the manager of a bank; and *Re Bank of Hindustan, China, and Japan, Ross's case* (W. N. 1868, pp. 36, 102), as to a similar claim.

See *Re English Joint-Stock Bank, Yelland's case* (Law Rep. 4 Eq. 350), for the principle upon which the amounts payable for salary and compensation to the manager of a banking Company in respect of his engagement which has been suddenly terminated by the winding-up of the Company, will be calculated.

A Company which had taken a lease of a quarry, and covenanted for payment of the rent, was ordered to be wound-up, and the leasehold interest was sold under the winding-up. On the application of the lessor for leave to enter a claim for future rent, it was ordered that a claim should be entered for the whole value of the future rent, with the qualification that the lessor should not receive more than the amount which the Company might become liable to pay under the covenant; the order to be without prejudice to any application to dissolve the Company, but no order of dissolution to be made without notice to the lessor: (*Re Haytor Granite Company*, Law Rep. 1 Ch. App. 77; 35 L. J. Ch. 154; 12 Jur. N. S. 1; 13 L. T. N. S. 515.)

In a case similar to the last, where the lessor of premises to a Company had obtained leave to enter a claim for the amount at which the future rent was estimated, in the terms of the order in the last case, a dividend was paid by the liquidators, and it was held that the lessor was not entitled to have a sum equal to the dividend upon the amount at which the future rent was estimated, impounded, to secure payment of the future rent; and a summons for that purpose was dismissed: (*Re London and Colonial Company, Horsey's case*, Law Rep. 5 Eq. 561.)

An English and French Company had their chief offices in the city of London; but two distinct boards of directors—an English one in London, and a French one in Paris. A member of the French board took a lease (not under the seal of the Company) of a house in Paris, as managing director of the association, for its offices there. The Company was ordered to be wound-up by the court here; and the lessor came in to prove for (*inter alia*) the whole that was due to him in respect of the rent for the premises, the term in which was to expire in 1871. It was objected that the French directors had no authority to accept the lease, and generally that it was not binding on the Company here.

It was held that the Company was bound by the lease, and that there should be a reference to chambers to ascertain what was due to the lessor in respect of it: (*Re General International Agency Company*, 16 L. T. N. S. 274, Ch.; W. N. 1867, p. 137.)

As to a claim by the promoters of a Company for promotion money, see *Re Madrid Bank, Ex parte Williams* (Law Rep. 2 Eq. 216), p. 16, *ante*.

As to whether the transferee of securities under seal, issued by a Company, is bound by equities between the original holder and the Company, see pp. 20, 125, *ante*.

See, also, *Re China Steamship Company, Ex parte Mackenzie*, Law Rep. 7 Eq. 240.

Where a bank has issued a letter of credit, on the terms that the bills which they agree to accept are to be covered by bills of lading to a like amount, suspension of payment by the bank before there has been time for the letter of credit to be used, is not a breach or repudiation of contract; inasmuch as permission might have been given to the liquidators under the winding-up to negotiate the bills; and a claim by the holder of the letter of credit, under this act, for damages for the alleged breach, was disallowed: (*Re Agra Bank, Ex parte Tondeur*, Law Rep. 5 Eq. 160.)

Where a claim was made for a certain sum by a financial agent

for negotiating the purchase of a business by a Company, and it appeared on the evidence that the money claimed was to be paid on the completion of the negotiation, but the negotiation had not been completed before the winding-up of the Company, the claim was disallowed, without prejudice to the claimant applying for payment for his services upon a *quantum meruit*: (*Re English Joint-Stock Bank, Bradlaugh's case*, W. N. 1867, p. 12.)

Under a winding-up subsequent to "The Winding-up Amendment Act of 1857," and prior to this act, on the Company being found to be insolvent, an annuitant was held entitled to prove under the winding-up for the estimated value of the annuity, without taking any preliminary proceedings to establish the amount as a debt: (*Re English and Irish Church and University Assurance Society, Ex parte Hunt*, 1 H. & M. 79; 7 L. T. N. S. 669.)

Where the taxed costs of a successful application against a Company, were directed to be paid by the Company which was being wound-up, the official liquidator was held justified in refusing payment of the costs in preference to the other debts of the Company: (*Re Scottish and Universal Bank, Ex parte Ship*, 11 Jur. N. S. 619, Ch.; 12 L. T. N. S. 728.)

(*b*) *Shall be admissible to proof against the Company.*]—For the practice with regard to the proof of debts, see General Order of November, 1862, clauses 20—28, *post.*

If a creditor who makes a claim will not submit to produce all the documents in his possession relating to his claim, it will be disallowed: (*Re Constantinople and Alexandria Hotel Company*, 35 Beav. 349.)

In a winding-up under this act, the court adopts the rule in chancery, under which a mortgagee is entitled to receive a dividend on the full amount of his debt, and then make the most of his security, provided he does not receive in the whole more than 20*s.* in the pound, and the creditor of a Company holding security is entitled to prove for the whole amount that is due to him, and not merely, as the rule is in bankruptcy, for the balance remaining due after realising or valuing his security.

A secured creditor is entitled to prove for the amount of his debt, as it stands at the time when his claim is sent in, without regard to securities which have been realised by him, between the sending in of his claim and its being adjudicated upon: (*Re Barned's Banking Company, Kellock's case; Re Xeres Wine Shipping Company, Ex parte Alliance Bank*, Law Rep. 3 Ch. App. 769.)

Bills of Exchange having been accepted by a banking Company and indorsed to a holder for value, the Company passed a resolution to wind-up voluntarily, and the winding-up was ordered to be continued under supervision. After this date, the holder received from the drawer a composition of 8*s.* 6*d.* in the pound on the amount of the bills. After the payment the holder lodged a claim with the liquidator for the whole amount of the bill: it was held, that he was entitled to prove only for the balance, after deducting the part payment: (*Re Oriental Commercial Bank, Ex parte Maxoudoff*, Law Rep. 6 Eq. 582.)

Where a sum of money was paid into a branch bank, on the same day on which the intelligence arrived that the head office had stopped payment, and it appeared on the evidence that the money was paid in before the message had been received, the court refused to order the money to be paid in preference to other claims: (*Re Agra and Masterman's Bank, Ex parte Waring*, W. N. 1866, p. 399.)

Where a contractor with a Company was by his contract bound, at

the option of the Company, to accept payment to a certain amount in shares, it was held that after the Company had been ordered to be wound-up, the contractor could not be called upon to accept payment in shares, the option not having been exercised till after the winding-up: (*Re Alexandra Park Company, Sharon's claim*, 12 Jur. N. S. 482, Ch.)

An assignee of a debt due from a Company in course of winding-up does all that is necessary to complete his title and to take the debt out of the order and disposition of the assignor (in case of his bankruptcy) by giving notice to the official liquidator: (*Re Breech-Loading Armoury Company, Wragge's case*, Law Rep. 5 Eq. 284.)

With regard to one Company taking upon it the liabilities of another Company, and the right of the creditors of the latter to prove their claims in the winding-up of the former, see *Re Era Assurance Company, Williams's case* (1 H. & M. 672), and *ReBritish Provident Assurance Society, Ex parte Anglo-Australian Association* (10 L. T. N. S. 326).

(*c*) *A just estimate being made of the value of all such debts or claims, &c.*] —By Rule 25 of the General Order and Rules of November, 1862, the estimate is to be made according to the value of the debts and claims at the date of the order to wind-up the Company.

This rule, however, only relates to contingent and unliquidated demands, and does not apply to claims which are defined and require no valuation under this section. For an explanation of the rule, see the judgment of Wood, V. C.: (*Re Trent and Humber Company, Ex parte Cambrian Steam-Packet Company*, Law Rep. 6 Eq. 399, n.)

In April, 1865, Company A. entered into a contract with Company B. to repair a steam ship, within the period of sixteen weeks from the 1st of April, 1865, for 1950*l*. On the 7th of August, 1865, an order was made for winding-up Company A. At this time the repairs of the ship were not completed, and the period (which had been extended to twenty weeks in consequence of a lock-out in the iron trade) had not expired. After some delay, the repairs were completed by the official liquidator of Company A. under orders obtained in the winding-up; and in May, 1866, the ship was delivered to Company B. Damages having been claimed by Company B. for loss of charter-parties and depreciation in value of the ship, between the time fixed by the contract for her completion and the time of her actual delivery, it was held, first, that the claim was not barred by this section, nor by the 25th rule of the General Order of November, 1862; and, secondly, following *Cory* v. *Thames Iron Works Company* (Law Rep. 3 Q. B. 181), that the damages recoverable would be the net profit which Company B. might have obtained by chartering the vessel, if she had been delivered at the time fixed by the contract instead of in May, 1866: (S. C. Law Rep. 6 Eq. 397.)

159. *General scheme of liquidation may be sanctioned.*— The liquidators may,(*a*) with the sanction of the court,(*b*) where the Company is being wound-up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution(*c*) of the Company where the Company is being wound-up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, pre-

sent or future, certain or contingent, ascertained or sounding only in damages against the Company, or whereby the Company may be rendered liable.

(*a*) *The liquidators may, &c.*]—See now "The Liquidation Act, 1868," *post*, as to a scheme of liquidation.

(*b*) *With the sanction of the court.*]—Sufficient information as to a proposed compromise must be laid before the court before it will sanction it: (*Re Northumberland and Durham Banking Company, Ex parte Totty*, 1 Drew. & Sm. 273; on appeal, 6 Jur. N. S. 849.)

See, also, as to a compromise in a winding-up, *Re Risca Coal and Iron Company* (30 Beav. 528); on appeal (which was dismissed as being brought too late), (8 Jur. N. S. 900); and *Re Central Darjeeling Tea Company* (W. N. 1866, p. 361).

(*c*) *With the sanction of an extraordinary resolution, &c.*]—In the voluntary winding-up of a Company a claim was made, which was opposed, and the liquidator took out a summons to have it adjudicated upon by the court, to which the claimant consented. Evidence having been gone into, the liquidator was advised to effect a compromise, and terms were agreed upon, subject to approval by extraordinary resolution under this section, on the part of the shareholders. A meeting was accordingly summoned, and though the compromise was objected to by some of the shareholders, it was adopted. Further proceedings being threatened by the dissentients, another summons was taken out by the liquidator to show cause why the agreement should not be carried out, and upon its being adjourned into court the Master of the Rolls declined to make any order, thinking that the court was bound, before giving its sanction, to satisfy itself that the compromise was advantageous to the Company, and that he had not sufficient materials to enable him to decide whether it was. The claimant appealed, and it was held that, as by the original summons the question was before the court when the meeting was held, the compromise could not be carried into effect without its sanction; and that being so, that the court should not confine itself to the mere duty of seeing whether the approval of the Company had been duly obtained, but was bound to satisfy itself that the agreement was a proper one. But in the face of the resolution of approval, the onus of showing the impropriety of the compromise, was shifted to the dissentients. Per Rolt, L. J.: Under the 138th section, *supra*, a contributory was not entitled to have the whole question reopened, and the propriety of the compromise determined, as if the Company was being wound-up by the court, and as if the Company had not in meeting approved of the compromise: (*Re Lama Coal Company, Miller's claim*, Law Rep. 2 Ch. App. 692; 16 L. T. N. S. 726.)

160. *Power to compromise.*—The liquidators may, with the sanction of the court where the Company is being wound-up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound-up altogether voluntarily, compromise (*a*) all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or con-

tingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

(*a*) *The liquidators may compromise, &c.*]—A judge in chambers may set aside a contract or compromise entered into with the official liquidator, if it is such as to require his sanction, but unless it requires such approval, he has no jurisdiction: (*Re Leeds Banking Company; Ex parte Clarke*, 12 Jur. N. S. 780, Ch.; 14 L. T. N. S. 789, Ch.)

See, also, *Re Home Counties, &c., Company, Ex parte Garstin*, 10 W. R. 457.

In the case of *Smith, Knight, and Company* (W. N. 1868, p. 240), the Master of the Rolls (although expressing some doubt as to his power to do so) sanctioned an arrangement with contributories generally, by which the official liquidator was to accept, for calls, 20*l.*, if paid within two months, in satisfaction of 25*l.* payable within two years, although all the creditors had not assented to the arrangement.

A release from the official liquidator discharging a shareholder of a Company from all liabilities, claims, and demands, which the Company or the official liquidator might have against him as a shareholder or contributory of the Company, was held not to release him from liability for misconduct as a director: (*Turquand* v. *Marshall*, Law Rep. 6 Eq. 112.)

Where a compromise has been duly made, all parties will be bound by it unless proceedings are taken at once to upset it. See *Re Eastern Counties, &c., Railway Company, Underwood's case*, 5 De G. M. & G. 677; *Re Midland Union, &c., Railway Company, Lucy's case*, 4 Ib. 356; *Re Nister Dale Iron Company, Hughes's case*, 1 De G. & S. 606.

161. *Power for liquidators to accept shares, &c., as a consideration for sale of property of Company.*—Where any Company is proposed to be or is in the course of being wound-up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution (*a*) of the Company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other Company, for the purpose of distribution

amongst the members of the Company being wound-up, or may enter into any other arrangement whereby the members of the Company being wound-up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing Company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the Company being wound-up; subject to this proviso, that if any member (*b*) of the Company being wound-up who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, (*c*) such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the Company, or for appointing liquidators; but if an order be made within a year for winding-up the Company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is sanctioned by the court.

(*a*) *The liquidators may with the sanction of a special resolution, &c.*]—For observations on the general scope and objects of this section, see the judgment of Wood, V. C., in *Clinch* v. *Financial Corporation*, Law Rep. 5 Eq. 471.

This section only applies to cases where the Company is being wound-up voluntarily. See *Re London and Exchange Bank*, 16 L. T. N. S. 340; W. N. 1867, p. 63.

It does not apply to the case of a winding-up under supervision: (*Re Hafod Hotel Company*, W. N. 1868, p. 86.)

See, also, with regard to this section, *Re Agra and Masterman's Bank* (W. N. 1866, p. 400), and *Re Scinde, Punjaub, and Delhi Bank Corporation* (W. N. 1867, p. 41).

At a general meeting of the shareholders of a banking Company, resolutions were passed for the voluntary winding-up of the Company, and appointment of liquidators, and for confirming an agreement for

the amalgamation of the Company with the Bank of H., upon certain terms therein specified. The liquidators proceeded to wind-up the Company upon the footing of the amalgamation, and in conformity with this section. Two dissentient shareholders, who were abroad at the time of the meeting, presented a petition impeaching the amalgamation on the ground of the insufficiency of the notice convening the meeting, and for other reasons; and praying—1, that the Company might be wound-up by the court; 2, that if not, the voluntary winding-up might be continued under the supervision of the court; 3, that the rights of the petitioners as against their co-contributories and the liquidators might be declared; or 4, that they might be at liberty to use the names of the Company and the liquidators, in any proceedings they might be advised to take in reference to the winding-up. The order of the Master of the Rolls dismissing the petition was discharged, and it was held, first, that in the absence of any distinct allegations in the petition of misconduct on the part of the liquidators, the court would make no order for continuing the voluntary winding-up under the supervision of the court. Secondly, that inasmuch as the voluntary winding-up and the amalgamation were all one transaction, and the amalgamation could not be impeached in that jurisdiction, and in the absence of the Bank of H., the petition must stand over to permit the petitioners to take proceedings to set aside the amalgamation. Thirdly, that the petitioners might be at liberty to use the names of the Company and the liquidators in such proceedings, on giving an undertaking to abide by such order as to costs as the court might make: (*Re Imperial Bank of China, India and Japan*, Law Rep. 1 Ch. App. 339; 35 L. J. Ch. 445; 12 Jur. N. S. 422; 14 L. T. N. S. 211.)

Subsequently a bill was filed by the Imperial Bank of China, India, and Japan, and the two dissentient shareholders, and the amalgamation was set aside. It was held, that in order to bring a transfer of the business of one Company to another Company within the provisions of this section, the circular convening the meeting, at which the transaction is to be submitted to the shareholders, must contain distinct notice that the arrangement is to be carried out by the liquidators under this section. That an arrangement for the transfer of the business of Company A. to Company B., by which in addition to having their liabilities per share raised from 50*l.* to 100*l.*, the shareholders of Company A. can only obtain shares in Company B. upon payment of 6*l.* premium per share, is not a valid sale or arrangement within the provisions of this section. And that acquiescence to bind all the members of a Company to a bargain which there is no power to confirm, must be acquiescence by every member of the Company: (*Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan*, Law Rep. 6 Eq. 91.)

This section, as was pointed out by Lord Cairns in the case of *Clinch* v. *The Financial Corporation* (Law Rep. 4 Ch. App. 117), contemplates a sale of the assets of the liquidating Company for such an equivalent in value as is pointed out in the section, and does not contemplate the subjecting of the shareholders in the liquidating Company, without their unanimous consent, to fresh and original liabilities.

The facts of this case were as follows: Company A. was formed for undertaking financial operations, its articles stipulating that the limitation of the liability of shareholders should be unalterable; and power was given to the directors "to amalgamate with, or purchase, or acquire" the business and property of any Company formed to carry on

any business included in the objects of Company A.; Company B. was formed with the object of carrying on banking and financial operations, and "any other further objects which the Company might from time to time adopt." In March, 1865, an agreement was come to between the respective directors for the amalgamation of these two Companies, upon the terms that the shareholders of Company A. were to be bound to take 25,000 shares of Company B. at 6*l.* per share (to be credited as 5*l.*), such sum of 150,000*l.* to be paid for out of the assets of Company A., and if they were insufficient, by a call on the shareholders of Company A. By resolutions passed at an extraordinary general meeting of Company A., held in April, 1865, it was resolved that the amalgamation should be effected, pursuant to the terms of the agreement, and that Company A. should be wound-up. It was held (affirming the judgment of Wood, V. C., Law Rep. 5 Eq. 450) that such an arrangement was void, as being *ultrà vires;* and could not be supported under this section; and it was considered, although the point did not actually arise in the case, that such an arrangement would be void, even if only the shareholders who assented to it were bound by it. A shareholder in Company A., the plaintiff in the case, first complained of the proposed arrangement in June, 1865. In September, 1865, notice of the registration of certain shares in Company B., under the arrangement, was first sent to the Registrar of Joint-Stock Companies. The plaintiff filed his bill on the 10th of November, 1865; it was held that he was not too late in coming to have the arrangement set aside, and that he was competent to sue on behalf of himself and of all the other shareholders (though many were assenting, and the arrangement had actually been carried into effect), to have the arrangement set aside.

(*b*) *Subject to this proviso, that if any member, &c.*]—No shareholder of a Company, which is in course of voluntary liquidation, is bound, in the absence of express assent on his part, to accept shares in any other Company, although the liquidators may have agreed that such shall be taken, and such agreement may have been duly confirmed by a meeting of the shareholders in manner prescribed by this section. But if he do not express his dissent from the agreement in the manner, or within the time, specified in this section, he loses his right to have his interest purchased under its provisions. General powers of amalgamation given to the directors in the articles of association do not authorise them to bind non-assenting shareholders to accept the new shares. And it seems no power which could be given to directors, short of express words to that effect, would enable them to do so: (*Re Bank of Hindustan, China, and Japan, Higgs's case* (2 H. & M. 657.) See, also, the same Bank, *Ex parte Los* (11 Jur. N. S. 661, Ch.; 12 L. T. N. S. 690); and *Re London, Bombay, and Mediterranean Bank, Drew's case* (16 L. T. N. S. 657, Ch.), *ante.*

In *Re Scinde, Punjaub, and Delhi Bank Corporation* (W. N. 1866, p. 41; 15 L. T. N. S. 602, Ch.) the court made an order (under sect. 138 of this act), confirming an agreement between the liquidators of a Company being voluntarily wound-up, and another Company, although certain shareholders dissented, and had given the notice required by this section.

(*c*) *To be determined in manner hereinafter mentioned.*]—Where a shareholder, in the notice given by him to the liquidators, put the alternative to purchase his shares, at the price which he gave for them, and

not at a price to be determined, &c., he was held not to have precluded himself from taking the benefit of the provisions of this and the following section: (*Re Anglo-Italian Bank and De Rosaz*, Law Rep. 2 Q. B. 452; 16 L. T. N. S. 412.)

162. *Mode of determining price.*—The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," (*a*) with respect to the settlement of disputes by arbitration, shall be incorporated with this act; and in the construction of such provisions (*b*) this act shall be deemed to be the special act, and "the Company" shall mean the Company that is being wound-up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

(*a*) *The provisions of "The Companies Clauses Consolidation Act*, 1845," *&c.*]—These provisions of that act (8 & 9 Vict. c. 16) are as follows:

128. *Appointment of arbitrator when questions are to be determined by arbitration.*—When any dispute, authorised or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator, to whom such dispute shall be referred, and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

129. *Vacancy of arbitrator to be supplied.*—If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint, in writing, some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the

same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability, as aforesaid.

130. *Appointment of umpire.*—Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith, after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

131. *Board of Trade empowered to appoint an umpire, on neglect of the arbitrators, in case of railway Companies.*—If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway Company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

132. *Power of arbitrators to call for books, &c.*—The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party, which they or he may think necessary, for determining the question in dispute, and may examine the parties, or their witnesses, on oath, and administer the oaths necessary for that purpose.

133. *Costs to be in the discretion of the arbitrators.*—Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the cost of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators, or their umpires, as the case may be.

134. *Submission to arbitration to be made rule of court.*—The submission to any such arbitration may be made a rule of any of the Superior Courts, on the application of either of the parties.

(*b*) *In the construction of such provisions, &c.*]—The incorporated provisions, by sects. 128—130, provide for the appointment of two arbitrators, one by each party; and the arbitrators are to appoint an umpire; but in case of their default, sect. 131 only provides that, if one of the parties be a railway Company, the appointment of an umpire is to be by the Board of Trade. A dispute as to the price to be paid for his shares having arisen between a shareholder and a Company not a railway Company, and the arbitrators having neglected to appoint an umpire, it was held, on the authority of *Re Lord* (1 Kay & J. 90; 24 L. J. Ch. 145), that the case was within sect. 12 of "The Common Law Procedure Act, 1854" (17 & 18 Vict. c. 125), and a judge could therefore appoint an umpire under that section: (*Re Anglo-Italian Bank and De Rosaz*, Law Rep. 2 Q. B. 452; 16 L. T. N. S. 412.)

163. *Certain attachments, sequestrations, and executions to be void.*—Where any Company is being wound-up by the court or subject to the supervision of the court, any attachment, sequestration, distress, or execution(*a*) put in force against the estate or effects of the Company after the

commencement of the winding-up(*b*) shall be void to all intents.

(*a*) *Any attachment, sequestration, distress, or execution, &c.*]—Where an execution has been perfected by seizure before the commencement of the winding-up, a sale after the commencement is not a "putting in force of the execution" within this section: (*Re Great Ship Company, Ex parte Parry*, 33 L. J. Ch. 245; 10 Jur. N. S. 3; 9 L. T. N. S. 432. Turner, L. J.)

In this case the sheriff, who made the seizure, received notice of the original motion, but not of the appeal, and he was held to be entitled to the costs of his appearance on the original motion, but not to any costs on the appeal.

Notwithstanding this section, the court has power under the 87th section of this act, where a winding-up order has been made, to give leave to a creditor to proceed with an execution; and it seems this section is chiefly directed against cases of fraudulent preference. See *Re London Cotton Company* (Law Rep. 2 Eq. 53; 35 L. J. Ch. 425; 12 Jur. N. S. 313), p. 174, *ante*.

See, also, *Re Imperial Steam and Household Coal Company*, W. N. 1668, p. 105.

In the case of *Re Plas-yn-Mhowys Coal Company* (Law Rep. 4 Eq. 689), the sheriff had the Company's property in execution, when the winding-up petition was presented. The sheriff was restrained, upon the *ex parte* application of the petitioner, from selling the property seized until after the hearing of the petition. On making the order to wind-up, the court ordered the sheriff to deliver up the property to the official liquidator to be sold in the winding-up, reserving to the execution creditors the same priority against the proceeds of the sale, as if it had been made by the sheriff. The order (for the form of which see the report of the case) also provided for the payment of the charges of the sheriff, including his poundage.

See, also, *Re Hill Pottery Company*, Law Rep. 1 Eq. 649.

Where the winding-up petition was presented after the writ in an action against the Company had been served, but before judgment had been signed, and the creditor having no notice of the petition had obtained judgment, and a writ of execution had been issued and possession taken by the sheriff before the winding-up order was obtained, the court, in the exercise of its discretion, under sect. 87, *supra*, refused a motion for injunction to restrain execution. But the creditor was put upon terms in regard to the description of property to be taken: (*Re Bastow and Company*, Law Rep. 4 Eq. 681; 16 L. T. N. S. Ch. 788.)

The rent of a colliery, demised to certain persons who declared themselves trustees for a Company, fell into arrear, and the landlord put in a distress upon the premises. At that time a petition had been presented, upon which an order to wind-up the Company was afterwards made. Upon a petition by the landlord for leave to remove and sell the goods distrained, it was held that, notwithstanding this section, he was entitled to proceed with the distress and sell the goods of the Company upon the premises, and leave was given accordingly. It seems the prohibition contained in this section against enforcing a distress against the effects of a Company which has been ordered to be wound-up, applies only where the Company is the tenant: (*Re Exhall Coal Mining Company*, 33 L. J. Ch. 595; 10 Jur. N. S. 576; 10 L. T. N. S. 286.)

See *Re Waterloo Life, &c., Assurance Company*, 31 Beav. 589.

Where an action brought by liquidators appointed in a voluntary winding-up under supervision failed, the court refused to restrain execution by the defendant for costs: (*Re Bank of Hindustan, China, and Japan, Ex parte Levick and others*, Law Rep. 5 Eq. 69.)

And see the case of the same Company (*Ex parte Joseph Mackrill Smith* (Law Rep. 3 Ch. App. 125, *ante*), in which the lien of the defendant's solicitors on the judgment (obtained against the Company with costs) for his costs, was held to prevail against a right of set-off claimed by the Company; and it was held that, if this section applied to such a case and made the execution on the judgment void (as to which the court did not decide), the court of equity would put the defendant and his solicitors in the same position, as if the execution were not so technically restrained.

H. having recovered judgment against a Company, obtained a garnishee order against S., an alleged debtor to the Company. S. denied that he was indebted to the Company, and H., by leave of a judge, brought an action against him, and pending the proceedings, the Company was ordered to be wound-up, and a liquidator was appointed. A motion by the liquidator for an injunction to restrain the proceedings at law was refused, but it was ordered that in case H. should recover a verdict, he should not put in force any execution against the estate of the Company in the hands of S.: (*Re United English and Scottish Life Insurance Company*, Law Rep. 5 Eq. 300.)

See the judgment of Wood, L. J., in *Re United English and Scottish Assurance Company, Ex parte Hawkins* (Law Rep. 3 Ch. App. 790), for a dictum to the effect that the Court of Chancery, after the presentation of a petition for winding-up a Company, would not restrain a judgment-creditor who had obtained a garnishee order attaching money belonging to a Company previous to the presentation of such petition, from pursuing his legal remedy and obtaining payment of the money.

(*b*) *The commencement of the winding-up.*]—A winding-up commences when the petition is presented. See sect. 84, *supra*.

164. *Fraudulent preference.*—Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property(*a*) as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference(*b*) of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound-up under this act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding-up a Company shall in the case of a Company being wound-up by the court or subject to the supervision of the court, and a resolution for winding-up the Company shall in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy in the case of an individual

trader; and any conveyance or assignment made by any Company formed under this act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

(*a*) *Any act relating to property.*]—These acts are too numerous to be gone into here; they will be found in works on the law of bankruptcy.

(*b*) *To have been done by way of undue or fraudulent preference.*]—Though a Company is insolvent, it is not every act of the Company which will amount to a fraudulent preference. There must be a contemplation of bankruptcy, that is to say, of a winding-up, and there must be absence of pressure.

A Company whose directors were empowered to issue debentures, and to borrow money "upon mortgage or otherwise," issued mortgage debentures. Some of these were issued in fulfilment of contracts with tradesmen, whereby they agreed to furnish goods to the Company on being paid partly in cash and partly in debentures. Others were issued to the tradesmen as security for their cash balances. Others were issued on the 18th of October, in pursuance of an arrangement come to on the 29th of the previous September, whereby the Company agreed to pay the creditors 5*s*. in the pound in one month, 5*s*. in the pound in the following January, and the remaining 10*s*. in debentures. The only dissentient creditors came into the arrangement on the 29th of October; but on that day a winding-up petition was presented, and they did not receive any debentures. A voluntary winding-up, under a resolution passed on the 10th of November, was afterwards continued under supervision. It was sought to impeach the last class of debentures on the ground of fraudulent preference; but it was held that they were not invalidated, either by reason of the failure of the arrangement of the 29th of September, or on the ground of fraudulent preference under this section, and that they were all valid mortgages: (*Re Inns of Court Hotel Company*, Law Rep. 6 Eq. 82.)

See, also, with regard to this section, *Re Masons' Hall Tavern Company, Habershon's case* (Law Rep. 5 Eq. 286), and *Re Smith, Knight, and Company, Ex parte Ashbury* (Law Rep. 5 Eq. 223.)

165. *Power of court to assess damages against delinquent directors and officers.*—Where, in the course of the winding-up of any Company under this act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied(*a*) or retained, or for which he has

become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

(*a*) *Compel him to repay any moneys so misapplied, &c.*]—A Company being in course of voluntary winding-up, a petition was presented, under this section, by some of the contributories, charging the directors with misapplication of moneys of the Company, and praying a winding-up by the court. The evidence being insufficient to establish the case of misapplication, but sufficient to lay ground for inquiry, the court refused to direct an inquiry, but gave liberty to the petitioners to file a bill in the name of the Company against the directors, the petitioners to indemnify the Company against the costs.

It was doubted by Turner, L. J., whether this section of the act applies under a voluntary winding-up. Where it does apply, the court has a discretion as to whether the remedies given by it should be resorted to: (*Re Bank of Gibraltar and Malta*, Law Rep. 1 Ch. App. 69; 11 Jur. N. S. 916; 13 L. T. N. S. 386.)

The jurisdiction to make directors or other officers of a Company, who have misapplied or retained moneys of the Company, repay the moneys so misapplied or retained, given by this section, is only applicable in cases of a simple character. Where the matter is complicated, the repayment must be enforced by bill. A summary order was made, under this section, that directors who had received from the promoter of a Company sums of money in consideration of their becoming directors, which sums he had paid out of the funds of the Company, should repay the moneys which they had so received. A similar order was made that the directors should repay moneys which they had paid themselves as fees, after a petition had been presented to wind-up the Company, and notice had been served on them not to part or deal with the moneys of the Company: (*Re Brighton Brewery Company, Hunt's case*, 37 L. J. Ch. 278; W. N. 1868, p. 56.)

And it was held, in another case, that no order will be made under this section to compel a director or officer of a Company to refund any moneys he has misapplied or retained, unless the case against such director or officer be clearly and distinctly made out, and there is no question of law to be determined: (*Re Royal Hotel Company of Great Yarmouth*, Law Rep. 4 Eq. 244; 16 L. T. N. S. 655.)

See, also, *Re Reese River Silver Mining Company*, W. N. 1867, p. 139.

This section does not apply as against the representatives of a deceased director. Where acts of directors or other officers sought to be inquired into are the acts of a body of persons, some of whom are dead—*quære*, whether the court can proceed against the survivors under the section, or whether a suit is not necessary: (*Re East of England Bank, Feltom's Executors' case*, Law Rep. 1 Eq. 219; 35 L. J. Ch. 196; 13 L. T. N. S. 741.)

166. *Penalty on falsification of books.*—If any director, officer, or contributory of any Company wound-up under this act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register,

book of account, or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending(*a*) shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

(*a*) *Every person so offending.*]—See, also, 24 & 25 Vict. c. 96, s. 82, *et seq.*

167. *Prosecution of delinquent directors in the case of winding-up by court.*—Where any order is made for winding-up a Company by the court or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the court may, on the application of any person(*a*) interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be), to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the Company.

(*a*) *On the application of any person, &c.*]—As to the manner of making the application, see clause 51 of the General Order of November, 1862, *post.*

168. *Prosecution of delinquent directors, &c., in case of voluntary winding-up.*—Where a Company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible,(*a*) it shall be lawful for the liquidators, with the previous sanction of the court,(*b*) to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the Company in priority to all other liabilities.

(*a*) *For which he is criminally responsible.*]—Criminal responsibility is incurred where one takes or applies for his own use any property of the Company; where he keeps fraudulent accounts; where he wilfully destroys, or mutilates, or alters any books, &c., belonging to the Company; and where he makes, circulates, or publishes fraudulent statements (see 24 & 25 Vict. c. 96, ss. 81—87). Criminal proceedings under this act do not affect any remedy at law or equity (for which see p. 40, *ante*) which the party aggrieved may have against the persons guilty of the above-mentioned offences.

(*b*) *With the previous sanction of the court.*]—See clause 51 of the General Order of November, 1862, *post.*

169. *Penalty of perjury.*—If any person, upon any examination upon oath or affirmation authorised under this act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any Company under this act, or otherwise in or about any matter arising under this act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

POWER OF COURTS TO MAKE RULES.

170. *Power of Lord Chancellor of Great Britain to make rules.*—In England the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice-Chancellors for the time being, or with the advice and consent of any two of the Vice-Chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding (*a*) to be had for winding-up a Company in the Court of Chancery as may from time to time seem necessary, but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding-up Companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a Company.

(*a*) *Make such rules concerning the mode of proceeding, &c.*]—See the General Order and Rules of November, 1862, *post.*

171. *Power of Court of Session in Scotland to make rules.*—In Scotland the Court of Session may make such rules concerning the mode of winding-up as may be necessary by act of sederunt; but, until such rules are made, the general practice of the Court of Session in suits pending in such court shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding-up a Company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

172. *Power to make rules in Stannaries Court.*—The vice-warden of the Stannaries may from time to time, with the consent provided for by section twenty-three of the act of eighteenth of Victoria, chapter thirty-two, make rules for carrying into effect the powers conferred by this act upon the court of the vice-warden, but, subject to such rules, the

general practice of the said court and of the registrar's office in the said court, including the present practice of the said court in winding-up Companies, may be applied to all proceedings under this act; the said vice-warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said court in proceedings under this act; and any rules so made shall be of the same force as if they had been enacted in the body of this act; and the fees paid in respect of proceeding taken under this act, including fees taken under "The Joint-Stock Companies Act, 1856," in the matter of winding-up Companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the court, as the Lord Warden of the Stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the court arising from other business, to await such direction and order of the lord warden herein, and to accumulate by investment in Government securities until the whole shall have been so appropriated.

173. *Power of Lord Chancellor of Ireland to make rules.*—In Ireland the Lord Chancellor of Ireland may, as respects the winding-up of Companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this act hereinbefore given to the Lord Chancellor of Great Britain; but until such rules are made the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding-up Companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a Company.

PART V.

REGISTRATION OFFICE.

174. *Constitution of registration office.*—The registration of Companies under this act shall be conducted as follows; (that is to say,)

(1.) The Board of Trade may from time to time appoint such registrars, assistant registrars, clerks, and

servants as they may think necessary for the registration of Companies under this act, and remove them at pleasure :

(2.) The Board of Trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid :

(3.) The Board of Trade may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no Company shall be registered except at an office within that part of the United Kingdom in which by the Memorandum of Association the registered office of the Company is declared to be established; and the board may require that the registrar's office of the court of the vice-warden of the Stannaries shall be one of the offices for the registration of Companies formed for working mines within the jurisdiction of the court :

(4.) The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies :

(5.) Every person may inspect the documents kept by the Registrar of Joint-Stock Companies ; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection ; and any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar ; and there shall be paid for such certificate of incorporation, certified copy, or extract, such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words :

(6.) The existing registrar, assistant registrars, clerks, and other officers and servants in the office for the registration of joint-stock Companies shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of

their duties conform to any regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any registrar, assistant-registrar, clerk, or servant that may hereafter be employed in the registration of joint-stock Companies such salary as the Board of Trade may, with the sanction of the Commissioners of the Treasury, direct:

(8.) Whenever any act is herein directed to be done to or by the Registrar of Joint-Stock Companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing Registrar of Joint-stock Companies, or, in his absence, to or by such person as the Board of Trade may for the time being authorise; in Scotland to or by the existing Registrar of Joint-Stock Companies in Scotland; and in Ireland to or by the existing Assistant Registrar of Joint-Stock Companies for Ireland, or by such person as the Board of Trade may for the time being authorise in Scotland or Ireland in the absence of the registrar; but in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS.

175. *Definition of Joint-Stock Companies Acts.*—The expression "Joint-Stock Companies Acts" as used in this act shall mean "The Joint-Stock Companies Act, 1856," "The Joint-Stock Companies Acts, 1856, 1857," "The Joint-Stock Banking Companies Act, 1857," and "The Act to enable Joint-Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such acts, as the case may require; but shall not include the act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.*

176. *Application of act to Companies formed under Joint-Stock Companies Acts.*—Subject as hereinafter mentioned,(*a*) this act, with the exception of Table A. in the first schedule, shall apply to Companies formed(*b*) and registered under the said Joint-Stock Companies Acts, or any of them, in the same manner in the case of a limited Company as if such Company had been formed and registered under this act as a Company limited by shares, and in the case of a Company other than a limited Company as if such Company had been formed and registered as an unlimited Company under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint-Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this act shall, in the case of any Company formed and registered under the said Joint-Stock Companies Acts or any of them, extend to altering any provisions contained in the table marked B. annexed to "The Joint-Stock Companies Act, 1856," and shall also in the case of an unlimited Company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the Memorandum of Association.

(*a*) *Subject as hereinafter mentioned.*]—See the observations of Lord Cranworth, L. C., on these words, in his judgment: (*Re London Indiarubber Company*, Law Rep. 1 Ch. App. 329.)
See, also, Part VIII. of this act.

(*b*) *This act shall apply to Companies formed, &c.*]—The Court of Chancery Appeal decided that a Company registered under the former Joint-Stock Companies Acts may be wound-up voluntarily under the supervision of the court, without being re-registered under this act: (*Re London Indiarubber Company*, Law Rep. 1 Ch. App. 329; 35 L. J. Ch. 592; 12 Jur. N. S. 402; 14 L. T. N. S. 316.)
See, also, *Re Torquay Bath Company* (32 Beav. 581; 9 Jur. N. S. 633), and *Bowes* v. *Hope Life Insurance Company* (11 Ho. Lords Cas. 389).

177. *Application of act to Companies registered under Joint-Stock Companies Acts.*—This act shall apply to Companies registered but not formed under the said Joint-Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this act, with this qualification, that wherever reference is made expressly or impliedly to the

date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint-Stock Companies Acts or any of them.

178. *Mode of transferring shares.*—Any Company registered under the said Joint-Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use,(*a*) or in such other manner as the Company may direct.

(*a*) *Transferred in manner hitherto in use, &c.*]—This provision is inserted because the act does not re-enact the provisions of the act of 1856 with reference to the transfer of shares.

PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

179. *Regulations as to registration of existing Companies.*—The following regulations shall be observed with respect to the registration of Companies under this part of this act; (that is to say,)

(1.) No Company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint-stock Company as hereinafter defined,(*a*) shall register under this act in pursuance of this part thereof:

(2.) No Company having the liability of its members limited by act of Parliament or by letters patent shall register under this act in pursuance of this part thereof as an unlimited Company, or as a Company limited by guarantee:

(3.) No Company that is not a joint-stock Company as hereinafter defined shall in pursuance of this part of this act register under this act as a Company limited by shares:

(4.) No Company shall register under this act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:

(5.) Where a Company not having the liability of its

members limited by act of Parliament or letters patent is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

(6.) Where a Company is about to register as a Company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound-up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

(*a*) *A joint-stock Company as hereinafter defined.*]—For this definition see sect. 181, *infra*.

180. *Companies capable of being registered.*—With the above exceptions, and subject to the foregoing regulations,(*a*) every Company existing at the time of the commencement of this act, including any Company registered(*b*) under the said Joint-Stock Companies Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any act of Parliament other than this act, or of letters patent, or being a Company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this act(*c*) as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound-up.

(*a*) *Subject to the foregoing regulations.*]—See, also, sects. 182—184 and sect. 188, *infra*.

(*b*) *Including any Company registered.*]—This act applies to them whether they register under it or not. See sects. 176 and 177, *supra*.

(*c*) *May at any time hereafter register itself under this act.*]—See *Re London Indiarubber Company* (Law Rep. 1 Ch. App. 329), and *Re Torquay Bath Company* (32 Beav. 581; 9 Jur. N. S. 633).

181.—*Definition of joint-stock Company.*—For the purposes of this part of this act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a joint-stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company when registered with limited liability under this act shall be deemed to be a Company limited by shares.(*a*)

(*a*) *Shall be deemed to be a Company limited by shares.*]—See, however, the proviso in the next section with regard to banking Companies.

182. *Proviso as to banking Company.*—No banking Company(*a*) claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited Company.

(*a*) *No banking Company.*]—See, also, sect. 188, *infra*.

183. *Requisitions for registration by Companies.*—Previously to the registration in pursuance of this part of this act of any joint-stock Company(*a*) there shall be delivered to the registrar the following documents; (that is to say,)

(1.) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(2.) A copy of any act of Parliament, royal charter, letters patent, deed of settlement, contract of co-

partnery, cost-book regulations, or other instrument constituting or regulating the Company :(*b*)

(3.) If any such joint-stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars; (that is to say,)

The nominal capital of the Company and the number of shares into which it is divided:

The number of shares taken and the amount paid on each share :

The name of the Company, with the addition of the word "limited"(*c*) as the last word thereof:

With the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

(*a*) *Any joint-stock Company.*]—See sect. 181, *supra.*

(*b*) *Instrument constituting or regulating the Company.*]—With regard to insurance Companies completely registered under 8 Vict. c. 110, see sect. 209, *infra.*

(*c*) *The addition of the word "limited."*]—See sect. 190, *infra.*

184. *Requisitions for registration by existing Company not being a joint-stock Company.*—Previously to the registration in pursuance of this part of this act of any Company not being a joint-stock Company there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the Company, also a copy of any act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of guarantee.

185. *Power for existing Company to register amount of stock instead of shares.*—Where a joint-stock Company (*a*) authorised to register under this act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the

statement not more than six clear days before the day of registration.

(*a*) *Where a joint-stock Company.*]—See sect. 181, *supra.*

186. *Authentication of statements of existing Companies.*—The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made in pursuance of the act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two.

187. *Registrar may require evidence as to nature of Company.*—The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a joint-stock Company as hereinbefore defined. (*a*)

(*a*) *As hereinbefore defined.*]—For the definition, see sect. 181, *supra.*

188. *On registration of banking Company with limited liability notice to be given to customers.*—Every banking Company (*a*) existing at the date of the passing of this act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the Company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company; and in case the Company omits to give any such notice as is hereinbefore required to be given, then as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

(*a*) *Every banking Company.*]—See, also, sect. 182, *supra.*

189. *Exemption of certain Companies from payment of fees.*—No fees shall be charged in respect of the registration

n pursuance of this part of this act of any Company in cases where such Company is not registered as a limited Company, or where previously to its being registered as a limited Company the liability of the shareholders was limited by some other act of Parliament or by letters patent.

190. *Power to Company to change name.*—Any Company authorised by this part of this act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

191. *Certificate of registration of existing Companies.*—Upon compliance with the requisitions in this part of this act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B. and C.(*a*) in the first schedule hereto, the registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this act, and, in the case of a limited Company, that it is limited, and thereupon such Company shall be incorporated,(*b*) and shall have perpetual succession and a common seal, with power to hold lands; and any Banking Company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established by or under act of Parliament.

(*a*) *Fees payable under the tables marked B. and C.*]—The tables marked B. and C. will be found *post.*

(*b*) *Such Company shall be incorporated, &c.*]—As to the rights, liabilities, &c. of an incorporated Company, see sect. 18, *supra.*

192. *Certificate to be evidence of compliance with act.*—A certificate of incorporation given at any time to any Company registered in pursuance of this part of this act shall be conclusive evidence(*a*) that all the requisitions herein contained in respect of registration under this act have been complied with,(*b*) and that the Company is authorised to be registered under this act, as a limited or unlimited Company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this act.

(*a*) *Shall be conclusive evidence.*]—Other evidence may, however, be used to prove registration. See *Mostyn* v. *Calcott Hall Mining Company* (1 Fos. & Fin. 334), and also *Agriculturists' Cattle Insurance Company* v. *Fitzgerald* (16 Q. B. 432). But see *Reg.* v. *Frankland*, 9 Jur. N. S. 388.

(*b*) *That all the requisitions herein contained have been complied with.*]—See *Oakes* v. *Turquand and Harding*, *Re Overend, Gurney, and Company* (Law Rep. 2 H. L. 325), regarding the effect of the certificate of the registrar under sect. 18, *supra*.

See, also, *New Brunswick Railway Company* v. *Boore*, 3 H. & N. 249; *Banwen Iron Company* v. *Barnett*, 8 C. B. 406; *Re Independent Assurance Company*, *Bird's case*, 1 Sim. N. S. 47; *Pilbrow* v. *Pilbrow's Atmospheric Railway Company*, 5 C. B. 440.

The certificate, however, seems not conclusive as to the provisions of the act being applicable to a Company: (*Re Northumberland and Durham District Banking Company*, 3 De G. & J. 357.)

See *Re Torquay Bath Company*, 32 Beav. 581; 9 Jur. N. S. 633; 8 L. T. N. S. 527.

193. *Transfer of property to Company.*—All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action,(*a*) as may belong to or be vested in the Company at the date of its registration under this act, shall on registration pass to and vest in the Company as incorporated under this act for all the estate and interest of the Company therein.

(*a*) *Obligations and things in action.*]—See the next section.

194. *Registration under this act not to affect obligations incurred previously to registration.*—The registration in pursuance of this part of this act of any Company shall not affect or prejudice(*a*) the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such Company previously to such registration.

(*a*) *Shall not affect or prejudice.*]—See *Groux's Improved Soap Company* v. *Cooper* (8 C. B. N. S. 800), where it was held that a surety to a Company registered under 7 & 8 Vict. c. 110, and registered with limited liability under 18 & 19 Vict. c. 133, was not discharged by such registration; and *Hull Flax and Cotton Company* v. *Wellesly*, 6 H. & N. 38.

But see *Re Sheffield and Hallamshire Ancient Order of Foresters' Co-operative and Industrial Society*, *Ex parte Fountain* (11 Jur. N. S. 553, Ch., on appeal; 12 L. T. N. S. 335), *Dean* v. *Mellard* (15 C. B. N. S. 19), and *Linton* v. *Blakeney Industrial Society* (3 H. & C. 853).

195. *Continuation of existing actions and suits.*—All such actions, suits, and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this part of this act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such Company upon any judgment, decree, or order ob-

tained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the Company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding-up the Company.

196. *Effect of registration under act.*—When a Company is registered under this act(*a*) in pursuance of this part thereof, all provisions contained in any act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered Memorandum of Association and Articles of Association; and all the provisions of this act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this act, subject to the provisions following; (that is to say,)

(1.) That Table A. in the first schedule to this act shall not, unless adopted by special resolution, apply to any Company registered under this act in pursuance of this part thereof:

(2.) That the provisions of this act relating to the numbering of shares shall not apply to any joint-stock Company whose shares are not numbered:

(3.) That no Company shall have power to alter any provision contained in any act of Parliament relating to the Company:

(4.) That no Company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the Company:

(5.) That in the event of the Company being wound-up, every person shall be a contributory,(*b*) in respect of the debts and liabilities of the Company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such

debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the Company so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:

(6.) That nothing herein contained shall authorise any Company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this act, have been contained in the Memorandum of Association, and are not authorised to be altered by this act:

But nothing herein contained(*c*) shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this act in pursuance of this part thereof by virtue of any act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the Company.

(*a*) *When a Company is registered under this act, &c.*]—As to whether a Company, once registered under the act as an unlimited Company, can be converted by its shareholders into a limited Company, compare this section with sect. 12, *supra*.

(*b*) *Every person shall be a contributory, &c.*]—There is no provision in this act (corresponding to the 116th section of "The Companies Act, 1856") directing that creditors of limited Companies, subject to a winding-up order in respect of liabilities incurred under a contract of unlimited partnership, should lose none of their remedies. Hence, where an industrial society, under the Act of 1852, being in difficulties, had, in order to be wound-up, become registered under "The Industrial Societies Act, 1862," which incorporates this act, it was held that the members of the society were not liable to contribute beyond the full amount of their shares, in respect of the rights of persons who were creditors of the society when the winding-up order was made: (*Re Sheffield and Hallamshire Ancient Order of Foresters' Co-operative and*

Industrial Society, Ex parte Fountain, 11 Jur. N. S. 553, Ch., on appeal; 12 L. T. N. S. 335.)

(*c*) *But nothing herein contained, &c.*]—A Company who had, under their original deed of settlement, a power to reduce their capital, were held to have lost that power by being registered as a "Company Limited" under this act: (*The Droitwich Patent Salt Company, Limited*, v. *Curzon*, Law Rep. 3 Ex. 35.)

See, now, however, sect. 9 of "The Companies Act, 1867," *post*.

197. *Power of court to restrain further proceedings.*—The court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this part of this act, and before making an order for winding-up the Company, upon the application by motion of any creditor of the Company, restrain further proceedings(*a*) in any action, suit, or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the court thinks fit.

(*a*) *Restrain further proceedings.*]—See sects. 85, 195, and 196, *supra*, and also sect. 201, *infra*.

198. *Order for winding-up Company.*—Where an order has been made for winding-up a Company registered in pursuance of this part of the act, in addition to the provisions hereinbefore contained,(*a*) it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with(*b*) against any contributory of the Company in respect of any debt of the Company, except with the leave of the court, and subject to such terms as the court may impose.

(*a*) *Provisions hereinbefore contained.*]—See sects. 87 and 196, *supra*.

(*b*) *Shall be commenced or proceeded with.*]—See sects. 195, *supra*, and 202, *infra*.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

199. *Winding-up of unregistered Companies.*—Subject as hereinafter mentioned, any partnership, association, or Company,(*a*) except railway Companies incorporated(*b*) by act of Parliament, consisting of more than seven members, and not registered under this act, and hereinafter included under the term unregistered Company, may be wound-up under this act, and all the provisions of this act with respect to

winding-up shall apply to such Company, with the following exceptions and additions:

(1.) An unregistered Company shall, for the purpose of determining the court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such Company be deemed to be the registered office of the Company:

(2.) No unregistered Company shall be wound-up(*c*) under this act voluntarily or subject to the supervision of the court:

(3.) The circumstances under which an unregistered Company may be wound-up are as follows; (that is to say,)

(*a.*) Whenever the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;

(*b.*) Whenever the Company is unable to pay its debts;

(*c.*) Whenever the court is of opinion that it is just and equitable(*d*) that the Company should be wound-up:

(4.) An unregistered Company shall, for the purposes of this act, be deemed to be unable to pay its debts,(*e*)

(*a.*) Whenever a creditor to whom the Company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the Company, by leaving the same at the principal place of business of the Company, or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three

weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(*b.*) Whenever any action, suit, or other proceeding has been instituted against any member of the Company for any debt or demand due, or claimed to be due, from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary, or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the court may approve or direct, the Company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(*c.*) Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the Company, or any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the Company, is returned unsatisfied;

(*d.*) Whenever, in the case of an unregistered Company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery, materials, and effects of such mine has been made in a creditor's suit in the court of the vice-warden;

(*e.*) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*f.*) Whenever it is otherwise proved to the satisfaction of the court that the Company is unable to pay its debts.

(*a*) *Any partnership, asssociation, or Company.*]—These words were held to be wide enough to include a joint-stock Company formed in India and incorporated by registration under Indian law, and having its principal place of business in India, with an agent and a branch office in England, and it was held that it might be wound-up under this act: (*Re Commercial Bank of India*, Law Rep. 6 Eq. 517.)

It appears that mutual insurance societies unincorporated and unregistered may be wound-up under this act. See *Re Shields Marine Insurance Association, Lee and Moor's case* (Law Rep. 5 Eq. 368), *Re London Marine Insurance Association* (W. N. 1869, p. 108), and *Re London and Westminster Insurance Company, Ex parte Phillips* (3 De G. & S. 3; 14 Jur. 929). These associations being pretty numerous, some information concerning them may be useful. They are usually established by shipowners for marine insurance, with the object of indemnifying each other against loss, and without any view to profit. The members are associated together by virtue only of several mutual contracts, whereby each member, on effecting an insurance of his own ship, becomes bound to contribute to a loss sustained by any other member. Each society of this kind is of course governed by the rules it has laid down for its own regulation. With regard to the rules of such societies, and the rights and liabilities of the members of them as among themselves, see *Bromley* v. *Williams* (32 Beav. 177), *Re Shields Marine Insurance Association, Lee and Moor's case* (Law Rep. 5 Eq. 368), *Re London Marine Insurance Association* (W. N. 1869, p. 108), and *Harvey* v. *Beckwith* (4 N. R. 90, 258).

With regard to an action on a policy by a member of such an association, see *Strong* v. *Harvey* (3 Bing. 304), where it was held that an association, in which there was no joint profit and loss to be divided among the members, did not constitute a partnership.

It appears that scrip Companies may also be wound-up under this act. See *Re Mexican and South American Mining Company, Barclay's case*, 26 Beav. 177. Some Companies, while still unincorporated, and having no registered memorandum and articles, issue what is called a "scrip certificate." This is a document acknowledging the right of the person named in it (or, more commonly, the holder) to obtain certain specified shares in the undertaking when it is established. The certificate, although giving a right to acquire the shares specified, does not oblige the holder to take them: (*Re Littlehampton, Havre, and Honfleur Steamship Company*, 34 Beav. 256; 2 De G. J. & S. 521; and *Jackson* v. *Cocker*, 4 Beav. 59.)

If transferable to bearer it must have a penny stamp (17 & 18 Vict. c. 63, s. 8), the transfer of it operates merely as the assignment of a bargain: (*Knight* v. *Barber*, 16 M. & W. 66; *Tempest* v. *Kilner*, 2 C. B. 300.)

Those Companies in which nothing is required in order to make shareholders of such scripholders, and in which no distinction is made between the two classes are termed "scrip Companies." See, also, on this subject, *Re Mexican and South American Mining Company, Grisewood's case* (4 De G. & J. 544), *Aston's case* (*Ib.* 320), and *Re Littlehampton, Havre, and Honfleur Steamship Company, Ormerod's case* (Law Rep. 5 Eq. 110).

Cost-book Mining Companies.

A mining Company on the cost-book principle may also be wound-up under this act, and the court of the vice-warden of the Stannaries is the proper jurisdiction for winding it up, where it is engaged in working a

mine in Cornwall or Devon (*Re East Botallack Consolidated Mining Company*, 34 Beav. 82). Such Companies are usually formed in these counties. A number of adventurers, who have obtained permission to work a lode, club together to form a capital. They meet and agree as to the number of shares the capital is to be divided into, and the number to be allotted to each. An agent is appointed, commonly called a purser, for the purpose of managing the affairs of the mine under the control of the shareholders. They enter in a book called the "cost-book" the minutes of their proceedings, comprising the agreement they have entered into, and the names of all the shareholders with the number of shares held by each entered opposite to his name, and the minutes are signed by all present. The purser, or one or two of the adveuturers, then take from the owner of the lode a lease or a licence to dig, or both, (called a sett) for a term of years. In the cost-book are entered from time to time all the affairs of the partnership, the receipts and expenditure of the mine, the transfers of shares, and the minutes of meetings at which the accounts are passed, calls made, dividends declared, or new resolutions come to as to the working of the mine, &c.

The shares may be transferred or relinquished, if the cost-book regulations do not provide to the contrary, by any shareholder, so far as his brother shareholders are concerned, without their consent.

With regard to the constitution of these Companies, see Collier on Mines, 2nd edit. p. 111, *et seq.*; and *Watson* v. *Spratley* (24 L. J. Ex. 53).

With regard to the power of shareholders to transfer or relinquish their shares, see *Re Bodmin United Mines Company* (23 Beav. 378), *Re Pennant and Craigwen Company, Fenn's case* (4 De G. M. & G. 285), *Mayhew's case* (5 *Ib.* 837), *Birch's case* (2 De G. & J. 10), and *Toll* v. *Lee* (4 Exch. 230).

As to the liability of shareholders to creditors for goods supplied, see *Lanyon* v. *Smith* (3 B. & S. 938), *Harvey* v. *Clough* (2 N. R. 204), *Newton* v. *Daly* (1 Fos. & Fin. 26), *Tredwen* v. *Bourne* (6 M. & W. 461), *Ellis* v. *Schmœck* (5 Bing. 521), and *Peel* v. *Thomas* (15 C. B. 714).

As to the winding-up of these Companies, see *Re Wheal Lovell Mining Company, Ex parte Wyld* (1 Mac. & G. 1), *Re Bosworthon Mining Company* (26 L. J. Ch. 612), and *Re Wheal Anne Mining Company* (10 W. R. 330).

(*b*) *Except railway Companies incorporated, &c.*]—Railway Companies coming under the operation of "The Abandonment of Railways Act, 1850" (13 & 14 Vict. c. 83) may now be wound-up under this act. See "The Railway Companies Act, 1867" (30 & 31 Vict. c. 127), sect. 31, *post.*

(*c*) *No unregistered Company shall be wound-up, &c.*]—A Company registered under the act of 1856 (18 & 19 Vict. c. 47), but not under this act, may be wound-up voluntarily, under a resolution passed after this act came into operation.

The words "unregistered Company" in this section mean a Company not registered under any act, and not a Company unregistered under this act: (*Re Torquay Bath Company*, 32 Beav. 581; 9 Jur. N. S. 633.)

See *Bowes* v. *The Hope Mutual Life Assurance Society*, 35 L. J. Ch. 574, In Dom. Proc. See, also, the observations of Lord Cranworth, L. C., on the last case, in his judgment in *Re London Indiarubber Company*, Law Rep. 1 Ch. App. 329.

As to industrial and provident societies see *post.*

(*d*) *Whenever the court is of opinion that it is just and equitable, &c.*]—A winding-up order was made in the case of a canal Company incorporated by special act of Parliament, on the ground of its being just and

equitable, under this section, the canal being worked at a loss: (*Re Wey and Arun Junction Canal Company*, Law Rep. 4 Eq. 197; 36 L. J. Ch. 509.)

See sect. 79, *supra*, as to when the court will think it just and equitable to wind-up a Company.

An order to wind-up was also made, under this section, in the case of *Re Company of Proprietors of Basingstoke Canal Navigation* (W. N. 1866, p. 251).

See, also, the case of *Re Isle of Wight Ferry Company* (34 L. J. Ch. 194).

(*e*) *Deemed to be unable to pay its debts.*]—As to when a registered Company shall be deemed unable to pay its debts, see sects. 79 and 80, *supra*.

200. *Who to be deemed a contributory in the event of Company being wound-up.*—In the event of an unregistered Company being wound-up every person shall be deemed to be a contributory(*a*) who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the Company, and every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

(*a*) *Every person shall be deemed to be a contributory, &c.*]—J. C. took 300 shares in a cost-book mining Company, and in order to increase the apparent number of shareholders, and thereby cause the mining scheme to be more favourably regarded in the share market, caused 100 of them to be transferred into the name of A., and 100 to be transferred into the name of B., who, notwithstanding the transfers, neither attended meetings nor paid calls, nor took any part in the affairs of the Company. It was held, that, having regard to the absence of any *bonâ fide* trusteeship on the part of A. and B., and to the extended definition of the word "contributory" in this section, J. C. was properly inserted on the list of contributories in respect of the whole 300 shares: (*Wheal Emily Mining Company, Cox's case*, 33 L. J. Ch. 145; 9 Jur. N. S. 1184; 9 L. T. N. S. 493.)

Where the rules of an unregistered Mutual Marine Insurance Company provided that, upon any ship insured with the Company being mortgaged, the mortgagee should give a guarantee for the payment of all averages and contributions due, or to become due, in respect of the ship, it was held, that a mortgagee who had given such a

guarantee to the Company was not a contributory within the meaning of this section: (*Re Shields Marine Insurance Association, Lee and Moor's case*, Law Rep. 5 Eq. 368.)

See, also, *Re London Marine Insurance Association* (W. N. 1869, p. 108); and *Re Exhall Mining Company, Bleckly's case* (15 W. R. 1104; 16 L. T. N. S. 784).

201. *Power of court to restrain further proceedings.*—The court may, at any time after the presentation of a petition for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any action,(*a*) suit, or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the court thinks fit.

(*a*) *Restrain further proceedings in any action, &c.*]—See sect. 85, *supra*, and *Re Great Ship Company, Ex parte Parry* (33 L. J. Ch. 245; 10 Jur. N. S. 3), p. 163, *ante*, a case decided under this section.

See, also, sects. 197 and 199, *supra*.

202. *Effect of order for winding-up Company.*—Where an order has been made(*a*) for winding-up an unregistered Company in addition to the provisions hereinbefore contained(*b*) in the case of Companies formed under this act, it is hereby further provided that no suit, action, or other legal proceeding,(*c*) shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the court, and subject to such terms as the court may impose.

(*a*) *Where an order has been made, &c.*]—After an order has been made for winding-up, a judgment-creditor will be restrained by injunction from proceeding to execution under a *fi. fa.* against the Company: (*Re Waterloo Assurance Company*, 31 Beav. 589; 32 L. J. Ch. 371.)

But see sects. 87 and 163, *supra*.

(*b*) *The provisions hereinbefore contained.*]—These provisions are contained in Part IV. of this act.

(*c*) *No suit, action, or other legal proceeding, &c.*]—The defendants in an action who were members of an unregistered society, enrolled and certified under the Industrial and Provident Societies Act (15 & 16 Vict. c. 31) gave a promissory note in the following form for a debt of the society:—"Twelve months after date, we, the undersigned, being members of the executive committee, on behalf of the London and South-Western Railway Co-operative Society, do jointly promise to pay," &c. They were held to be personally liable. After the making of this note the society was registered under "The Industrial and Provident Societies Act, 1862" (25 & 26 Vict. c. 87); and, after action brought, an order was obtained for winding it up under this act, and proceedings under that order were taken in the County Court. The plaintiff had not obtained leave to proceed under this section, and it was held

that the omission to obtain such leave could not be taken advantage of by plea to the further maintenance of the action; but only, if at all, by application to the court in which the proceedings under the winding-up order were being pursued: (*Gray* v. *Raper*, Law Rep. 1 C. P. 694.)

In an action against a shareholder in a Company, working a mine on the cost-book system, for goods supplied to the Company, it appeared that after the defendant had parted with his shares in it, the remaining members of the Company caused it to be registered under the Joint-Stock Companies Act (21 & 22 Vict. c. 60), and an order was made by the court of the vice-warden of the Stannaries to wind-up the Company, and stay all actions by creditors against it, and a list of contributories was drawn up, in which the name of the defendant was included. On an application to stay the action, it was held that the plaintiff had a right to proceed, and that the court of the vice-warden had no power to make that order, as the defendant was not a member of the registered Company, and the debt sued for was not a debt of that Company: (*Lanyon* v. *Smith*, 3 B. & S. 938.)

See, also, *Harvey* v. *Clough* (8 L. T. N. S. 324, Ex.), following the last decision.

203. *Provision in case of unregistered Company.*—If any unregistered Company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may, by the order made for winding-up such Company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of property, real and personal, and including things in action as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same, or such part thereof as may be specified in the order, shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity as the court directs, bring or defend any actions, (*a*) suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

(*a*) *Bring or defend any actions, &c.*]—Under sect. 95 of this act, the official liquidator of an unregistered Company which is being wound-up under this act, has power in his own name, and on behalf of the Company, without the vesting order mentioned in this section to institute a suit in equity against directors of the Company, for the purpose of compelling them to make good losses occasioned by their misconduct in the management of its affairs: (*Turquand* v. *Marshall*, Law Rep. 6 Eq. 112.)

See, also, on this subject, *The Grand Trunk Railway Company* v. *Brodie*, 3 De G. Mac. & G. 146; *Riddick* v. *Deposit and General Life Assurance Company*, 9 Ir. Com. Law. Rep. 84; *McDowell* v. *Davys*, 8 *Ib.* 43.

204. *Provisions in this part of act cumulative.*—The provisions made by this part of the act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding-up Companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this act; but an unregistered Company shall not, except in the event of its being wound-up, be deemed to be a Company under this act, and then only to the extent provided by this part of this act.

PART IX.

REPEAL OF ACTS AND TEMPORARY PROVISIONS.

205. *Repeal of acts.*—After the commencement of this act there shall be repealed(*a*) the several acts specified in the first part of the third schedule hereto,(*b*) with this qualification, that so much of the said acts as is set forth in the second part of the said third schedule shall be hereby re-enacted and continue in force as if unrepealed.

(*a*) *There shall be repealed, &c.*]—As to this, see the next section. As to the acts repealed, see the note to the third schedule of this act.

(*b*) *The third schedule hereto, &c.*]—For the third schedule to this act, see *post*.

206. *Saving clause as to repeal.*—No repeal hereby enacted shall affect,

(1.) Anything duly done(*a*) under any acts hereby repealed:

(2.) The incorporation of any Company registered under any act hereby repealed:

(3.) Any right or privilege acquired(*b*) or liability incurred under any act hereby repealed:

(4.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any act hereby repealed:

(5.) Table B. in the schedule annexed to "The Joint-Stock Companies Act, 1856," or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this act.

(*a*) *Anything duly done, &c.*]—A petition was presented for the winding-up of a Company, after which a resolution of the Company was passed for the voluntary winding of it up. This act then came into operation, after which the Company was registered under it. Upon the petition, which was entitled as above stated, coming on to be heard, it was objected that it ought to have been entitled in the Companies Act of 1862; it was held to be sufficiently entitled without the addition of this act: (*Re Public Life Assurance Society*, 7 L. T. N. S. 302, Ch.)

(*b*) *Any right or privilege acquired, &c.*]—The power given to a Company, by the 41st section of "The Companies Act, 1856" (19 & 20 Vict. c. 47), to contract for land by a person acting under its expressed or implied authority, is not, as regards a Company formed under that act, taken away by this act, although it repeals the act of 1856; for it is a "right or privilege" preserved by this section: (*Prince* v. *Prince*, 35 Beav. 386; Law Rep. 1 Eq. 490; 35 L. J. Ch. 290; 14 L. T. N. S. 43.)

207. *Saving of existing proceedings for winding-up.*—Where previously to the commencement of this act an order has been made for winding-up a Company under any acts or act hereby repealed, or a resolution has been passed for winding-up a Company voluntarily,(*a*) such Company shall be wound-up in the same manner and with the same incidents as if this act were not passed, and for the purposes of such winding-up such repealed acts or act shall be deemed to remain in full force.

(*a*) *A resolution has been passed for winding-up a Company voluntarily.*]—Prior to this act a limited Company, which was liable to be wound-up in the Bankruptcy Court, passed a resolution for winding-up voluntarily; but after this act had come into operation a petition was presented for winding it up compulsorily; and it was held that, under this section, the jurisdiction was in Bankruptcy, and not in Chancery: (*Re West Silver Bank Mining Company*, 32 Beav. 226; 9 Jur. N. S. 632, Ch.)

But all jurisdiction to order the winding-up of a Company after the 2nd of November, 1862, is taken away from the Court of Bankruptcy by this section, notwithstanding the petition was presented before that date: (*Re Economic Omnibus Company, Ex parte Pope*, 7 L. T. N. S. 399, Bank.)

The 105th section of the 19 & 20 Vict. c. 47, empowers the court to make the usual order for winding-up an unlimited Company, registered under the act of 1856, and which is being wound-up voluntarily, at the instance of a contributory as well as of a creditor. The petition need not be entitled in the name of this act: (*Re Fire Annihilator Company*, 9 Jur. N. S. 633, Ch.; 8 L. T. N. S. 412.)

208. *Saving of conveyance deeds.*—Where previously to the commencement of this act any conveyance, mortgage, or

other deed has been made in pursuance of any act hereby repealed, such deed shall be of the same force as if this act had not passed, and for the purposes of such deed such repealed act shall be deemed to remain in full force.

209. *Compulsory registration of certain Companies.*—Every insurance Company (*a*) completely registered under the act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, intituled *An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies,* shall on or before the second day of November one thousand eight hundred and sixty-two, and every other Company (*b*) required by any act hereby repealed to register under the said "Joint-Stock Companies Acts," or one of such acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this act, register itself as a Company under this act, (*c*) in manner and subject to the regulations hereinbefore contained, with this exception, that no Company completely registered under the said act of the eighth year of the reign of Her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance Companies as are mentioned in this section to register under this act, this act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such Companies shall not have any effect until the time of the commencement of this act. No fees shall be charged in respect of the registration of any Company required to register by this section.

(*a*) *Every insurance Company, &c.*]—See *London Monetary, &c. Company* v. *Smith*, 3 H. & N. 543; 27 L. J. Ex. 479.

As to the course of proceeding by Companies registering, see sect. 183, *supra*.

(*b*) *And every other Company, &c.*]—A Company does not come within the provisions of this section unless it was required by the earlier Joint-Stock Companies Acts (as to which see sect. 175, *supra*) to be registered.

A Company, formed in 1825, carried on business until the passing of the 7 & 8 Vict. c. 110, when it was formally registered under the 85th section of that act, but was never registered under this act or otherwise. The Company filed a bill for an injunction to restrain the pollution of a stream, but were met by the objection that for want of complete registration they could not sue in their corporate capacity. This was admitted, and the Company asked and obtained leave to amend, which they did by making ten members parties suing on behalf of themselves and the others, exceeding fifty in all. The amended bill was demurred

to for want of equity, on the ground that inasmuch as the Company was not completely registered, it was illegal under this and the following sections, and could not sue either in its corporate capacity or as a trading partnership. It was held that, except for the short period during which the act of 1856 was in force, the Company, by its members, had not been, and was not now, disabled from suing, and the demurrer was overruled: (*Womersley* v. *Merritt*, Law Rep. 4 Eq. 695; 17 L. T. N. S. 43, Ch.)

(*c*) *Register itself as a Company under this act, &c.*]—As to the consequences of omitting so to register, see the next section.

210. *Penalty on Company not registering*—21 *Vict. c.* 14, *s.* 28.—If any Company required by the last section to register under this act makes default in complying with the provisions thereof, then, from and after the day upon which such Company is required to register under this act, until the day on which such Company is registered under this act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say,)

(1.) The Company shall be incapable of suing(*a*) either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity:

(2.) No dividend shall be payable to any shareholder in such Company:

(3.) Each director or manager of the Company shall for each day during which the Company so being in default carries on business incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the Company, and be applied by him to his own use:

Nevertheless, such default shall not render the Company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this act shall cancel any penalty or forfeiture, and put an end to any disability which any Company may have incurred under any act hereby repealed by reason of its not having registered under the said Joint-Stock Companies Acts, 1856, 1857, or one of them.

(*a*) *The Company shall be incapable of suing, &c.*]—A Company originally constituted under the 7 & 8 Vict. c. 110, neglected to register, as directed by the last section. On a petition for winding-up being presented by the Company and the chairman jointly, it was held that the Company was precluded from petitioning by reason of its not having registered, and that it could not be permitted to evade the provisions of this section by joining a shareholder as a co-petitioner, and that no order could therefore be made upon the petition: (*Re Waterloo*

Life, &c., Assurance Company, 31 Beav. 586; 32 L. J. Ch. 370; 9 Jur. N. S. Ch. 291.)

See, also, *Womersley* v. *Merritt*, Law Rep. 4 Eq. 695; 17 L. T. N. S. 43.

211. *Temporary power for Companies to change registered office.*—Upon the application of the directors of any Company registered under the Joint-Stock Companies Acts as hereinbefore defined, or any of them, made within one year after the date of the commencement of this act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the Board of Trade shall have authority by their certificate in writing to change the registered office of any such Company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the Registrar of Joint-Stock Companies with whom the Memorandum of Registration of such Company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is pursuant to such certificate to take place, and shall attach the certificate to the memorandum; and the said registrar shall thereupon transmit to the Registrar of Joint-Stock Companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said Memorandum of Registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original Memorandum of Registration, and thereupon the place of the registered office shall, from the said last-mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: Provided, however, that such change shall in nowise alter or affect anything theretofore done by the said Company, or any of their rights or liabilities in respect thereof.

212. *Restrictions on issue of certificate.*—The Board of Trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the Company to apply to the Board of Trade for a certificate, with a declaration that all parties

objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of four successive weeks in the newspapers following; that is to say, in some newspaper circulating in the district where the registered office of the Company is situate, and also if the Company is registered in England in the *London Gazette*, if in Ireland in the *Dublin Gazette*, if in Scotland in the *Edinburgh Gazette*, nor until the said board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.(*a*)

Shares.(*b*)

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the Company in general meeting may prescribe, be entitled to a certificate,(*c*) under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or such less sum as the Company in general meeting may prescribe.

Calls on Shares.(*d*)

(4.) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they

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(*a*) These regulations apply to Companies formed under this act and limited by shares, if they have no Articles of Association, or where they have, unless they are excluded, or modified by their articles. See sect. 15, *supra*. By sect. 196, *supra*, however, they do not apply to Companies merely registered under the act unless they are specially adopted. See sect. 176, *supra*, as to their application to Companies registered under the Joint-Stock Companies Acts. This table corresponds to Table B. in "The Companies Act, 1856," and is similar to it in most respects. Sect. 50, *supra*, enables any Company, to which these regulations apply, to alter them by special resolution.

(*b*) As regards shares, see p. 52, *et seq.*, *ante*.

(*c*) See sect. 31, *supra*.

(*d*) With regard to the making and recovery of calls, see p. 141, *ante*.

think fit, provided that twenty-one days' notice(*a*) at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest(*b*) for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.(*c*)

(8.) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9.) Shares in the Company shall be transferred in the following form: —I *A.B.* of in consideration of the sum of pounds paid to me by *C.D.* of do hereby transfer to the said *C.D.* the share [*or* shares] numbered standing in my name in the books of the Company, to hold unto the said *C.D.*, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said *C.D.* do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands, the day of .

(10.) The Company may decline(*d*) to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.(*e*)

(12.) The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in conse-

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(*a*) With regard to notices, see clauses 95—97, *infra*.

(*b*) See *Re Blakely Ordnance Company, Stocken's case* (Law Rep. 5 Eq. 6), p. 24, *ante*.

(*c*) With regard to the tranefer of shares, see p. 55, *ante*.

(*d*) As to a Company's right to decline to register a transfer, see p 101, *ante*.

(*e*) See sect. 24, *supra*.

quence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the Company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the Company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.(*a*)

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.

(18.) The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share, shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to

(*a*) With regard to the forfeiture of shares, see p. 23, *ante*.

the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.(*a*)

(23.) The directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the Company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.(*b*)

(26.) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares(*c*) such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital.

(*a*) As to the conversion of shares into stock, see sects. 28 and 29, *supra*.

(*b*) Sect. 12, *supra*, gives a Company power to increase its capital.

(*c*) As to Companies illegally issuing shares, see *Re New Zealand Banking Corporation* (Law Rep. 3 Ch. App. 131), and *Re Finance Corporation, Ex parte Feiling, Holmes, and others* (Law Rep. 2 Ch. App. 714), *ante*.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months(*a*) after the registration of the Company and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.(*b*)

(35.) Seven days' notice(*c*) at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the nonreceipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above

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(*a*) By "The Companies Act, 1867," s. 39 (*post*), every Company must now hold a general meeting within four months after registration.

(*b*) By sect. 67, *supra*, minutes of the proceedings at general meetings are to be duly kept.

(*c*) A shareholder who attends and votes at a meeting, cannot afterwards, it seems, object to an irregularity in the notice. The transaction of other business, foreign to the objects specified in the notice, will not make the whole meeting irregular: (*Re British Sugar Refining Company, Ex parte Faris*, 3 Kay & J. 408; 26 L. J. Ch. 869.)

quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.(*a*)

(44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(*a*) See sects. 51 and 52, *supra*, and *East Pant Du United Lead Mining Company* v. *Merryweather* (2 H. & M. 254), p. 131, *ante*.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the Company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the Company Limited, and entitled to vote *or* votes, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof [*or*, at any meeting of the Company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

(53.) Until directors are appointed the subscribers of the Memorandum of Association shall be deemed to be directors.(*a*)

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.(*b*)

(55.) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(*a*) The powers of such directors during their period of office are in all respects the same as those of directors appointed at a general meeting: (*Eales* v. *Cumberland Black Lead Mining Company* (*Limited*), 6 H. & N. 481; 30 L. J. Ex. 141.)

(*b*) With regard to directors generally, see p. 16, *et seq.* With regard to directors as agents, see p. 36, *ante*; as trustees, see p. 40, *ante*.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated,—

If he holds any other office(*a*) or place of profit under the Company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(*a*) The appointment by the directors of one of their own members to a salaried office under the Company seems valid under the statute, and not void or illegal at common law: (*Eales* v. *Cumberland, &c. Company*, 6 H. & N. 481; 30 L. J. Ex. 141.)

On this subject, see *The Iron Ship Coating Company* v. *Blunt* (Law Rep. 3 C. P. 484), *ante*.

(65.) The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.(*a*)

(66.) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum(*b*) necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69.) A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.(*c*)

(72.) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the Company.

(*a*) See p. 137, *ante*, as to directors keeping minutes of their proceedings.

(*b*) With regard to the number of directors necessary to form a quorum, see p. 16, *ante*.

(*c*) There is no provision in the body of the act with reference to the payment of dividends, unless in the case of a winding-up, which is provided for by sect. 38, cl. 7, and sect. 101, *supra*.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

(77.) No dividend shall bear interest as against the Company.

Accounts.

(78.) The directors shall cause true accounts to be kept—

Of the stock in trade of the Company;

Of the sums of money received and expended by the Company; and the matter in respect of which such receipt and expenditure takes place; and

Of the credits and liabilities of the Company:

The books of account shall be kept at the registered office of the Company, and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the committee in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet(*a*) shall be made out in every year, and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

(*a*) A form of balance-sheet is given at the end of this table.

Audit.

(83.) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the Company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the Company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid the Board of Trade may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company: he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

(94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.(*a*)

(95.) A notice may be served by the Company upon any member either

(*a*) The three following clauses provide for the service of notices as between a Company and its members. The service of notices on Companies, and the authentication of the notices of Companies is provided for by sects. 62—64 of the act.

personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

DR. BALANCE SHEET of the Company, made up to 18 . CR.

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.	PROPERTY AND ASSETS.			£ s. d.	£ s. d.
I. CAPITAL		Showing:			III. PROPERTY held by the Company.		Showing:		
	1.	The number of shares				7.	Immovable property, distinguishing—		
	2.	The amount paid per share ...					(*a*) Freehold land		
	3.	If any arrears of calls, the nature of the arrear, and the names of the defaulters.					(*b*) „ buildings		
							(*c*) Leasehold „		
	4.	The particulars of any forfeited shares.				8.	Movable property, distinguishing—		
II. DEBTS AND LIABILITIES of the Company.		Showing:					(*d*) Stock in trade		
	5.	The amount of loans on mortgages or Debenture bonds.					(*e*) Plant		
	6.	The amount of debts owing by the Company, distinguishing—					The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss.		
		(*a*) Debts for which acceptances have been given.			IV. DEBTS owing to the Company.		Showing:		
		(*b*) Debts to tradesmen for supplies of stock in trade or other articles.				9.	Debts considered good for which the Company hold bills or other securities.		
		(*c*) Debts for law expenses.				10.	Debts considered good for which the Company hold no security.		
		(*d*) Debts for interest on debentures or other loans.				11.	Debts considered doubtful and bad.		
		(*e*) Unclaimed dividends.					Any debt due from a director or other officer of the Company to be separately stated.		
		(*f*) Debts not enumerated above.							
III. RESERVE FUND.		Showing:			V. CASH and INVESTMENTS.		Showing:		
		The amount set aside from profits to meet contingencies.				12.	The nature of investment and rate of interest.		
IV. PROFIT AND LOSS.		Showing:				13.	The amount of cash, where lodged, and if bearing interest.		
		The disposable balance for payment of dividend, &c.							
V. CONTINGENT LIABILITIES.		Claims against the Company not acknowledged as debts.							
		Moneys for which the Company is contingently liable.							

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a Company whose nominal capital does not exceed 2000*l.*, a fee of	2	0	0
For registration of a Company whose nominal capital exceeds 2000*l.*, the above fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)			
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 2000*l.*, up to 5000*l.* ...	1	0	0
For every 1000*l.* of nominal capital, or part of 1000*l.* after the first 5000*l.*, up to 100,000*l.*	0	5	0
For every 1000*l.* of nominal capital, or part of 1000*l.* after the first 100,000*l.*	0	1	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 1000*l.*, or part of 1000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay in respect of nominal capital, on registration or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorised to be registered, other than the Memorandum of Association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ...	0	5	0

TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a Company whose number of members, as stated in the Articles of Association, does not exceed 20 ...	2	0	0
For registration of a Company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100	5	0	0
For registration of a Company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an addi-			

	£	s.	d.
tional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a Company in which the number of members is stated in the Articles of Association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the Company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one Company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorised to be registered, other than the Memorandum of Association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of ...	0	5	0

FORM D.

FORM OF STATEMENT REFERRED TO IN PART III. OF THE ACT.

(*a*) The capital of the Company is , divided into shares of each.

The number of shares issued is .

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the Company on the first day of January (*or* July) were,—

Debts owing to sundry persons by the Company:

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the Company on that day were,—

Government securities [*stating them*], £

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

(*a*) If the Company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE.

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the Company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are, "the conveyance of passengers and goods in ships or boats between such places as the Company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the Company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

WE the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of merchant	200
2. John Smith of	in the county of ...	25
3. Thomas Green of	in the county of ...	30
4. John Thompson of	in the county of ...	40
5. Caleb White of	in the county of ...	15
6. Andrew Brown of	in the county of ...	5
7. Cæsar White of	in the county of ...	10
	Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute-street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the Company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are, "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

(1.) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon

a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the nonreceipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business, and such quorum shall be ascertained as follows; that is to say, if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

(21.) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the Company Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or* at any meeting of the Company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

(25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

(26.) Until directors are appointed, the subscribers of the Memorandum of Association shall for all the purposes of this act be deemed to be directors.

Powers of Directors.

(27.) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28.) The directors shall be elected annually by the Company in general meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Accounts.

(29.) The accounts of the Company shall be audited by a committee of five members, to be called the audit committee.

(30.) The first audit committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company; they may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the Company.

(34.) The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the Company, and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35.) A notice may be served by the Company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding-up.

(37.) The Company shall be wound-up voluntarily whenever an extraordinary resolution, as defined by "The Companies Act, 1862," is passed, requiring the Company to be wound-up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute-street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the Company is "The Highland Hotel Company, Limited."

2nd. The registered office of the Company will be situate in Scotland.

3rd. The objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Cæsar White of	in the county of	

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute-street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the Company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of ...	200
2. John Smith of	in the county of ...	25
3. Thomas Green of	in the county of ...	30
4. John Thompson of	in the county of ...	40
5. Caleb White of	in the county of ...	15
6. Andrew Brown of	in the county of ...	5
7. Cæsar White of	in the county of ...	10
	Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute-street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY, HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the Company is "The Patent Stereotype Company."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Abel Brown of	in the county of	

Dated 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond-street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by Subscribers.
1. John Jones of in the county of merchant	1
2. John Smith of in the county of ...	5
3. Thomas Green of in the county of ...	2
4. John Thompson of in the county of ...	2
5. Caleb White of in the county of ...	3
6. Andrew Brown of in the county of ...	4
7. Abel Brown of in the county of ...	1
Total shares taken	18

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond-street, Middlesex.

FORM E. as required by the Second Part of the Act.

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the day of

Nominal capital £ divided into shares of £ each.
Number of shares taken up to the day of .
There has been called up on each share £
Total amount of calls received £
Total amount of calls unpaid £

LIST of persons holding shares in the Company on the day of , and of persons who have held shares thereon at any time during the year immediately preceding the said day of , showing their names and addresses, and an account of the shares so held.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks.
	Surnams.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the Day of	Additional Sharee held by existing Members during preceding year.		Shares held by Persons no longer Members.		
						Number.	Date of Transfer.	Number.	Date of Transfer.	

FORM F.

LICENCE TO HOLD LANDS.

The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations hereby license the Association, Limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*].

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 ... (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110 ...	An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.
7 & 8 Vict. c. 111 ...	An Act for facilitating the winding-up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113 ...	An Act to regulate Joint-Stock Banks in England.
8 & 9 Vict. c. 98 ...	An Act for facilitating the winding-up the Affairs of Joint-Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28 ...	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75 ...	An Act to regulate Joint-Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78 ...	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.
11 & 12 Vict. c. 45 ...	An Act to amend the Acts for facilitating the winding-up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding-up of Joint-Stock Companies and other Partnerships.
12 & 13 Vict. c. 108 ...	An Act to amend the Joint-Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47 ...	An Act for the Incorporation and Regulation of Joint-Stock Companies and other Associations.
20 & 21 Vict. c. 14 ...	An Act to amend the Joint-Stock Companies Act, 1856.

20 & 21 Vict. c. 49	...	An Act to amend the Law relating to banking Companies.
20 & 21 Vict. c. 78	...	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding-up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements, and also the Joint-Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80	...	An Act to amend the Joint-Stock Companies Act, 1856.
21 & 22 Vict. c. 60	...	An Act to amend the Joint-Stock Companies Acts, 1856 and 1857, and the Joint-Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91	...	An Act to enable Joint-Stock Banking Companies to be formed on the Principle of limited Liability.

NOTE.—Part IX. of this act repeals the acts here enumerated. The most important of the acts repealed is "The Joint-Stock Companies Act, 1856" (19 & 20 Vict. c. 47), upon which the present act is founded; it was amended by "The Joint-Stock Companies Act, 1857" (20 & 21 Vict. c. 14), in order to facilitate the winding-up of Companies and the registration of new Companies, and by the Joint-Stock Companies Banking Act (20 & 21 Vict. c. 49) with the view of embracing banking Companies; and by 20 & 21 Vict. c. 80, with reference to insurance Companies. In 1858 the act of 1856 was further amended by 21 & 22 Vict. c. 60.

The present act incorporates most of the provisions contained in the act of 1856, and in the acts amending it, and also many of the provisions of "The Winding-up Acts, 1848 and 1849."

SECOND PART.(*a*)

7 & 8 VICT. CAP. 113, S. 47.

Existing Companies to have the powers of suing and being sued.—Every Company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five

(*a*) Banking Companies (to which species of Companies this part has reference) are now under precisely the same law as other Companies, excepting so far as the special provisions contained in this act provide to the contrary.

A few words here with regard to the banking acts may be useful. All banking Companies consisting of more than six persons, with the exception of the Bank of England, were rendered illegal by the 39 & 40 Geo. 3, c. 28. 7 Geo. 4, c. 46, legalised banking Companies of more than six persons, provided they carried on business beyond the distance of sixty-five miles from London, and enacted that such Companies should, under certain conditions, sue and be sued in the name of their public officers.

3 & 4 Will. 4, c. 98, allowed Companies of more than six persons to carry on banking within sixty-five miles of London under certain restrictions, but did not give such Companies the privilege of suing and being sued in the name of public officers. 7 & 8 Vict. c. 113, s. 47, which is here preserved from repeal, extended, however, to the latter class of Companies the same privilege in this respect which the former class previously had.

The provision from 20 & 21 Vict. c. 49, which is also preserved here from repeal, increases the number of persons who may lawfully carry on the business of banking without being registered, from six to ten.

miles from London, and not within the provisions of the act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such Companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an act passed in the seventh year of the reign of King George the Fourth, chapter forty-six, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the same," provided that such first-mentioned Company shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the last-mentioned act, and all the provisions of the last-recited act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned Companies as if they had been originally included in the provisions of the last-recited act.

20 & 21 Vict. cap. 49, Part of Sect. 12.

Power to form banking partnerships of ten persons.—Notwithstanding anything contained in any act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint-Stock Banks in England," or in any other act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any Company of not more than six persons could before the passing of this act have carried on such business.

RAILWAY COMPANIES ARBITRATION ACT, 1859

(22 & 23 Vict. cap. 59).

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.(a)—[13*th August* 1859.]

For the better providing for the settlement by arbitration of matters in which railway Companies in the United Kingdom are mutually interested, be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. *Short title—"Railway Companies."*—This act may for all purposes be cited as "Railway Companies Arbitration Act, 1859;" and the expression "Railway Companies" in this act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used.

2. *Power for railway Companies to refer matters to arbitration.*—Any two or more Railway Companies, whether already or hereafter incorporated (in this act called "the Companies") from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the Companies which the directors of the Companies respectively might lawfully delegate to any committees of themselves respectively.

(a) By "The Companies Act, 1862," ss. 72 and 73, Companies under it are enabled to settle their differences with other Companies or persons, by arbitration under this act.

3. *Power to alter or revoke agreements for reference.*—The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this act theretofore entered into between the Companies, or any of the terms, conditions, or stipulations thereof.

4. *Agreements to be carried into effect.*—Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accordance with this act, shall bind the Companies, and may and shall be carried into full effect.

5. *Reference to a single arbitrator.*—Where the Companies agree, the reference shall be made to a single arbitrator.

6. *Reference to two or more arbitrators.*—Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Where there are two Companies the reference shall be made to two arbitrators:

Where there are three or more Companies the reference shall be made to so many arbitrators as there are Companies.

7. *Appointment of arbitrators by Companies.*—Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

8. *Appointment of arbitrators by Board of Trade.*—Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Board of Trade, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the Company so failing.

9. *Appointment of arbitrators by Companies to supply vacancies.*—When the reference is made to two or more

arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

10. *Appointment of arbitrators by Board of Trade to supply vacancies.* — Where the Company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Board of Trade may appoint an arbitrator; and the arbitrator so appointed by the Board of Trade shall for the purposes of this act be deemed to be appointed by the Company so failing.

11. *Appointment of arbitrator not revocable.*—When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other Company, or every other Company in writing under their common seal.

12. *Appointment of umpire by arbitrators.*—Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

13. *Appointment of umpire by Board of Trade.*—If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators.

14. *Appointment of umpire by arbitrators to supply vacancy.* —Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

15. *Appointment of umpire by Board of Trade to supply vacancy.*—If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the Companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators so failing.

16. *Succeeding arbitrators and umpires to have powers of predecessors.*—Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

17. *Reference to umpire.*—Where there are two or more arbitrators, if they do not, within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

18. *Power for arbitrators, &c., to call for books, &c., and administer oath.*—The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents of evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the Lord Ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

19. *Procedure in the arbitration.*—Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

20. *Arbitration may proceed in absence of Companies.*—The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the

Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

21. *Several awards may be made.*—The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

22. *Awards made in due time to bind all parties.*—The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the Companies.

23. *Power for umpire to extend period for making his award.*—Provided always, that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

24. *Awards not to be set aside for informality.*—No award made on any arbitration in accordance with this act shall be set aside for any irregularity or informality.

25. *Awards to be obeyed.*—Except only so far as the Companies bound by any award in accordance with this act from time to time otherwise agree, all things by every award in accordance with this act lawfully required to be done, omitted, or suffered shall be done, omitted, or suffered accordingly.

26. *Agreements, arbitrations, and awards to have effect.*—Full effect shall be given by all the Superior Courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the Companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this act; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite on the property of the Companies respectively, or by any other process against the Companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose.

27. *Costs of arbitration and award.*—Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively.

28. *Payment of costs.*—Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

29. *Submission to arbitration to be made a rule of court.*—The submission to any arbitration in accordance with this act may at any time be made a rule of any of Her Majesty's Superior Courts of Record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the court think fit.

GENERAL ORDER AND RULES

OF THE

HIGH COURT OF CHANCERY,

TO

REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1862.

ISSUED BY THE LORD HIGH CHANCELLOR.

TUESDAY, 11TH DAY OF NOVEMBER, 1862.

ORDER OF COURT.

Tuesday, the 11th day of November, 1862.

THE Right Honorable RICHARD BARON WESTBURY Lord High Chancellor of Great Britain, with the advice and consent of the Right Honorable SIR JOHN ROMILLY, Master of the Rolls; the Honorable the VICE-CHANCELLOR, SIR RICHARD TORIN KINDERSLEY, the Honorable the VICE-CHANCELLOR SIR JOHN STUART, and the Honorable the VICE-CHANCELLOR SIR WILLIAM PAGE WOOD, doth hereby, in pursuance and execution of the powers given by the statute 25th and 26th Victoria, chapter 89, and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

Petition to wind-up Company.

I. Every petition(*a*) for the winding-up of any Company by the court, or subject to the supervision of the court, shall be intituled(*b*) in the matter of "The Companies Act, 1862," and of the Company to which such petition shall relate, describing the Company by its most usual style or firm.

(*a*) See sects. 82 and 148 of the act. Forms of petitions for winding-up by the court, and under the supervision of the court, may be found in 2 Smith's Ch. Prac. 319, *et seq.*, 7th edit. The petition should show the nature of the Company, the position of the petitioner and his right to petition, and such circumstances as would, under sects. 79 and 80 of the act where a compulsory winding-up is sought, justify the court

in making a winding-up order. With regard to the orders made on petitions, see sects. 82, 86, and 147 of the act.

Where a limited Company presents a petition it may be compelled to give security for costs under sect. 69 of the act. A petitioner resident out of the jurisdiction of the court may also be required to give security: (*Ex parte Seidler*, 12 Sim. 106.)

When petitioners neglected to file a petition and had lost it, liberty was given to file a copy on the application of the respondents, and the petitioners were ordered to pay the costs of the application: (*Re Anglo-Greek Steam Navigation Company*, 35 Beav. 419.)

(*b*) Every petition presented after the 21st of March, 1868, and all notices, affidavits, and other proceedings under such petition, must be intituled in the matter of "The Companies Acts, 1862 and 1867." See Rule 1 of General Order of 21st of March, 1867, *post*.

2. Every such petition shall be advertised(*a*) seven clear days before the hearing, as follows:—

(1.) In the case of a Company whose registered office, or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.

(2.) In the case of any other Company, once in the *London Gazette*, and once at least in two local newspapers circulating in the district where such registered office, or principal, or last known principal place of business, as the case may be, of such Company is or was situate.

The advertisement(*b*) shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent, if any.

(*a*) Where a petition was advertised to be heard on "Saturday, the 20th of December," the 20th being on a Thursday, the court would not hear the petition, but required fresh notices to be given: (*Re Joint-Stock Companies Winding-up Act*, 13 Beav. 434.)

Where the advertisement was inserted too late to allow of the petition being heard on the day fixed, the court refused to dismiss the petition, and allowed it to stand over that fresh advertisements might be inserted for a subsequent day: (*Re London and Westminster Wine Company*, 1 Hem. & M. 561.)

In *Re Cork and Youghal Railway Company* (14 L. T. N. S. 750; W. N. 1866, p. 279), the court made a winding-up order on a petition, although it had not been presented until after one of the advertisements here required had been published.

As to withdrawing a petition after advertising it, see *Re Mid-Wales Hotel Company* (17 L. T. N. S. 597).

As to the effect of the advertisement as notice of the petition to parties entitled to appear at the hearing of it, see *Re Marlborough Club Company* (Law Rep. 1 Eq. 216), p. 167, *ante*.

(*b*) A form of advertisement is given in the third schedule (No. 1) hereto.

3. Every such petition shall, unless presented by the Company, be served at the registered office,(*a*) if any of the Company, and if no registered office, then at the principal, or last known principal place of business, of the Company, if any such can be found, upon any member, officer, or servant(*b*) of the Company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the Company as the court may direct; and every petition for the winding-up of a Company subject to the supervision of the court, shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the Company.

(*a*) As to the registered office, see sects. 39, 40, and 211 of the act. See, also, *Re London and Westminster Wine Company* (1 Hem. & M. 561); *Re Inventors' Association* (6 N. R. 349); *Re Great Cwmsymtoy Silver Lead Company* (17 L. T. N. S. 463); *Re South Essex Estuary and Reclamation Company* (18 L. T. N. S. 178); and *Re Velletri and Terracina Company* (Ib. 350).

(*b*) See *Re London and Dublin, &c., Railway Company* (3 De G. & S. 208), and *Ex parte Dale* (Ib. 11).

As to dispensing with service by consent, see *Re Brighton, Lewes, &c., Railway Company* (1 De G. & S. 604); *Ex parte Wolesey* (3 Ib. 101); and *Re Tring, Reading, &c., Railway Company* (Ib. 10).

4. Every petition for the winding-up of any Company by the court or subject to the supervision of the court, shall be verified by an affidavit(*a*) referring thereto, in the form or to the effect set forth in Form No. 2 in the third schedule hereto; such affidavit shall be made(*b*) by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the Company, by some director, secretary, or other principal officer thereof; and shall be sworn after(*c*) and filed within four days(*d*) after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.

(*a*) This rule does not mean that the prescribed affidavit shall in all cases be sufficient, but only that it shall in all cases be necessary: (*Re St. David's Gold Mining Company*, 14 L. T. N. S. 539.)

(*b*) See the judgment in *Re Anglo-Greek Steam Navigation and Trading Company* (35 Beav. 399), for remarks on the practice of making the statutory affidavit as to belief in the statements of a petition without clearly ascertaining the truth of such statements.

(*c*) An affidavit, sworn and filed before the presentation of the petition, does not comply with this rule; but where such a case occurred,

the court, upon a statement of the facts, allowed the affidavit to be resworn and filed, and the order which had been made on the petition, to be dated subsequently: (*Re Western Benefit Building Society*, 33 Beav. 368; 33 L. J. Ch. 179.)

(*d*) The court will, under proper circumstances, order the winding-up of a Company, although the affidavit in support of the petition was not filed within the four days here required: (*Re East Cambrian Gold Mining Company*, 12 L. T. N. S. 587.)

Where the person who had made the affidavit resided abroad, the court extended the time: (*Re Anglo-Danish Steam Navigation Company*, 15 L. T. N. S. 407.)

See, also, *Re Patent Screwed Boat and Shoe Company* (32 Beav. 142), and *Re Kentish Royal Hotel Company* (13 W. R. 448; 5 N. R. 423).

5. Every contributory or creditor of the Company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy.

Order to wind-up Company.

6. Every order for the winding-up of a Company by the court, or subject to its supervision, shall, within twelve days(*a*) after the date thereof, be advertised(*b*) by the petitioner once in the *London Gazette*, and shall be served upon such persons (if any) and in such manner as the court may direct.

(*a*) The court allowed an order which it had made to be advertised, although the twelve days here fixed had expired: (*Re East Cambrian Gold Mining Company*, 12 L. T. N. S. 587.)

(*b*) A form of advertisement is given in the third schedule (No. 5) hereto.

7. A copy of every order for winding-up a Company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the Company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge think fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertise-

ments to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

Official Liquidator.

8. The judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator,(*a*) and may appoint or reject any person nominated(*b*) at such time and place, and appoint any person not so nominated.

(*a*) As to the appointment of an official liquidator, see p. 178, *ante*.
As to the appointment of a liquidator in a voluntary winding-up under supervision, see *Re London Quays and Warehouses Company* (Law Rep. 3 Ch. App. 394), p. 233, *ante*.

(*b*) A form of proposal for appointment of official liquidator is given in the third schedule (No. 7) hereto.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised(*a*) in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

(*a*) A form of advertisement is given in the third schedule (No. 6) hereto.

10. Every official liquidator shall give security by entering into a recognisance(*a*) with two or more sufficient sureties, in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or act of Parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

(*a*) A form of recognisance is given in the third schedule (No. 10) hereto; as, also, a form of affidavit of sureties (No. 11).

11. The official liquidator shall be appointed by order;(*a*) and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers, and shall direct that all moneys to be

received shall be paid into the Bank of England, immediately after the receipt thereof, to the account of the official liquidator of the Company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England.

(*a*) A form of order is given in the third schedule (No. 8) hereto.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause, subject to giving security.

13. The official liquidator shall, on each occasion of passing his account, and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

14. Every appointment of an official liquidator shall be advertised,(*a*) in such manner as the judge shall direct, immediately after he has been appointed, and has given security.

(*a*) For a form of advertisement, see the third schedule (No. 15) hereto.

15. Where it is desired to appoint provisionally(*a*) an official liquidator, an application for that purpose may, at any time after the presentation of the petition for winding-up the Company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional official liquidator may, if the judge shall think fit, be appointed(*b*) without security.

(*a*) As to the appointment of a provisional official liquidator, see p. 164, *ante*.

(*b*) A form of order appointing a provisional official liquidator is given in the third schedule (No. 9) hereto.

16. In case of the death, removal or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorised by the judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the Company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the Company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited(*a*) from time to time with the amount payable by him in respect of any call to be made as provided by the said act and these rules.

(*a*) See sect. 154 of the act, and *Re Madrid and Valencia Railway Company, Chadwick's case* (15 Jur. 597), p. 238, *ante*.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration(*a*) as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless, the judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

(*a*) In May, 1868, the following Order, regulating the remuneration of official liquidators, was adopted by the Master of the Rolls and Vice-Chancellors, after having been sanctioned by the Lord Chancellor:—

"Every application by an official liquidator for remuneration must be supported by an affidavit showing the number of hours devoted by him and his clerks respectively to the business of the liquidation. In fixing the amount of the remuneration, the judge will, subject as hereinafter mentioned, be guided by the following scale:—

LIQUIDATORS.

		Per day of eight hours.	
		£	£
Group A.	Class 1. Where the assets divisible among the unsecured creditors shall not amount to	500	1
	Class 2. Where they shall amount to 500*l.* and not to	2000	2
	Class 3. Where they shall amount to 2000*l.* and not to	5000	3

			Per day of eight hours.
		£	£
Group B.	Class 4. Where they shall amount to 5000*l.* and not to	10,000	4
	Class 5. Where they shall amount to 10,000*l.* and not to	50,000	6
Group C.	Class 6. Where they shall amount to 50,000*l.* and not to	100,000	8
	Class 7. Where they shall amount to 100,000*l.* and not to	500,000	10
	Class 8. Where they shall amount to over ...	500,000	12

CLERKS.

	1st Class.	2nd Class.	3rd Class.	
	s. *d.*	*s.* *d.*	*s.*	
Group A.	2 0	1 6	1	per hour.
,, B.	3 0	2 6	1	,,
,, C.	3 6	2 6	1	,,

"If in the special circumstances of any liquidation it shall at any time, or from time to time, appear to the judge that it is proper to place it on a higher or lower class, he will so place it accordingly.

"If it shall appear to the judge that in the special circumstance of any liquidation it is proper to add to or deduct from the amount of the remuneration provided by the scale, he will make such addition or deduction accordingly. If during the progress of a liquidation it shall appear to the judge expedient so to do, he will sanction payments to the liquidator on account of his remuneration.

"For this purpose the judge will estimate the amount of such remuneration as well as circumstances will admit, and will pay to the liquidator either the whole of such estimated remuneration, or such part thereof as to the judge shall seem reasonable."

See *Re Agra and Masterman's Bank, Cannan's claim* (Law Rep. 7 Eq. 107), p. 179, *ante*. See, also, p. 184, *ante*, as to withholding remuneration from an official liquidator who had been guilty of culpable negligence.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any) as the judge shall direct, be passed and verified in the same manner as receivers' accounts.

Proof of Debts.

20. For the purpose of ascertaining the debts and claims due from the Company, and of requiring the creditors to come in and prove their debts or claims, an advertisement(*a*) shall be issued at such time as the judge shall direct; and such advertisement shall fix a time(*b*) for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their

solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon.

(*a*) For a form of advertisement, see the third schedule (No. 16) hereto.

(*b*) See sect. 107 of the act, p. 204, *ante*.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the Company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit,(*a*) setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

(*a*) For a form of affidavit, see the third schedule (No. 17) hereto.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice(*a*) to the creditors whose debts or claims have been so allowed, of such allowance.

(*a*) For a form of the notice, see the third schedule (No. 19) hereto.

24. The official liquidator shall give notice(*a*) to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove(*b*) the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims.

(*a*) A form is given in the third schedule (No. 20) hereto.

(*b*) For a form of affidavit by a creditor in proof of his debt, see the third schedule (No. 21) hereto.

25. The value of such debts and claims(*a*) as are made admissible to proof by the 158th section of the said act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind-up the Company.

(*a*) See *Re Trent and Humber Company, Ex parte Cambrian Steam Packet Company* (Law Rep. 6 Eq. 399, n.), p. 244, *ante*.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest, shall be entitled to interest, after the rate of 4*l*. per centum per annum, from the date of the order to wind-up the Company, out of any assets which may remain after satisfying the costs of the winding-up, the debts and claims established, and the interest of such debts and claims as by law carry interest.(*a*)

(*a*) This rule has been held to be unauthorised by the act, and therefore invalid, *Re East of England Banking Company* (4 Ch. App. 19); *Re Herefordshire Banking Company* (Law Rep. 4 Eq. 250); and *Re Hatfield Cask Company* (9 Jur. N. S. 997; 11 W. R. 971).

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

28. The result of the adjudication upon debts and claims shall be stated in a certificate(*a*) to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

(*a*) For a form, see the third schedule (No. 22) hereto.

List of Contributories.

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave at the chambers of the judge a list of the contributories of the Company; and such list shall be verified by the affidavit(*a*) of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest

to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave (*b*) of the judge, be varied or added to, by the official liquidator.

(*a*) For a form of affidavit, see the third schedule (No. 24) hereto. An additional affidavit (No. 29) must be made in support of the supplemental list.

(*b*) For a form of order on application to vary list, see the third schedule (No. 32) hereto.

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, (*a*) and shall give notice in writing (*b*) of such appointment to every person included in such list, and stating in what character, and for what number of shares, or interest such person is included in the list; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served (*c*) four clear days before the day appointed to settle such list, or such variation or addition.

(*a*) As to the settlement of the list, applications to take names off it, &c., see p. 185, *et seq.*

(*b*) For a form, see the third schedule (No. 26) hereto.

(*c*) For a form of affidavit of service of notice, see the third schedule (No. 27) hereto.

31. The result of the settlement of the list of contributories shall be stated in a certificate (*a*) by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

(*a*) For a form, see the third schedule (No. 31) hereto.

Sales of Property.

32. Any real or personal property belonging to the Company may be sold with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the court in a suit, or, if the judge shall so direct, by the official liquidator; (*a*) and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise

direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the court, under the second of the Consolidated General Orders, and may, on any sale by public auction, fix a reserved bidding; and, unless on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchasers into the Bank of England, to the account of the official liquidator of the Company.

(*a*) As to sales of a Company's property, see p. 182, *ante*.

Calls.

33. Every application (*a*) to the judge to make any call (*b*) on the contributories or any of them, for any purpose authorised by the said act, shall be made by summons, (*c*) stating the proposed amount of such call; and such summons shall be served, (*d*) four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or if the judge shall so direct, notice of such intended call may be given by advertisement. (*e*)

(*a*) The official liquidator must make an affidavit in support of his application for a call. A form is given in the third schedule (No. 33) hereto.

(*b*) As to the making of calls on contributories, see p. 200, *et seq.*

(*c*) For a form, see the third schedule (No. 34) hereto.

(*d*) Where a Company formed to carry on business in London and Paris, and having numerous shareholders resident in France, was ordered to be wound-up, and a call became necessary, it was proposed to serve them with the summons for making the call by post. It was held that for the mere purpose of making the call such service would be sufficient, it being open to the contributory so served to raise the question of the validity of the service when proceedings to enforce payment should be taken: (*Re General International Agency Company*, 16 L. T. N. S. 725, Ch., on appeal; W. N. 1867, p. 178.)

(*e*) For a form of advertisement, see the third schedule (No. 35) hereto.

34. When any order (*a*) for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice (*b*) from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of

the said act) in respect of such call; but such order need not be advertised unless, for any special reason, the judge shall so direct.

(*a*) For a form of the order, see the third schedule (No. 36) hereto.

(*b*) A form is given in the third schedule (No. 37) hereto.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and non-payment, an order (*a*) may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

(*a*) The application for the order must be supported by affidavit, for a form of which see the third schedule (No. 38) hereto. No. 39 is a form of the order itself. See, also, No. 42, a form of an affidavit of service of the order.

Payment in of Moneys and Deposit of Securities.

36. If any official liquidator shall not pay (*a*) all the moneys received by him into the Bank of England, to the account of the official liquidator (*b*) of the Company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with ten shillings for every 100*l.*, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

(*a*) As to the impropriety of an official liquidator employing the money of the Company for the purpose of making profit, see the observations of the Master of the Rolls: (W. N. 1866, p. 327.)

(*b*) See the third schedule (Form No. 14) hereto.

37. All bills, notes, and other securities payable to the Company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose

of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

38. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the Company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.(*a*)

(*a*) When the official liquidator desires to issue a writ of *fi. fa.* against a contributory who has not paid a call, he must obtain an order for payment to himself under this rule: (*Re Leeds Banking Company*, Law Rep. 1 Ch. App. 150.)

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in Form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the Bank of England an affidavit of the official liquidator, to the purport or effect set forth in Form No. 43 in the third schedule hereto, shall be sufficient evidence of the non-payment thereof.

41. All moneys, bills, notes, and other securities paid and delivered into the Bank of England, shall be placed to the credit of the account of the official liquidator of the Company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of Securities, and Payment out and Investment of Moneys.

42. All bills, notes, and other securities delivered into the Bank of England, shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of the winding-up, may be invested in the purchase of Bank 3*l.* per Cent. Annuities, Reduced 3*l.* per Cent. Annuities, New 3*l.* per Cent. Annuities, or New 2*l.* 10*s.* per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of England, upon a request(*a*) signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge.

(*a*) For a form of the request, see the third schedule (No. 44) hereto.

44. All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the Bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and

interest, as the case may be, into the Bank of England to the credit of the account of the official liquidator of the Company.

Meetings of Creditors or Contributories.

45. When the judge shall direct a meeting of the creditors or contributories of the Company to be summoned under the 91st(*a*) or 149th(*b*) section of the said act, the official liquidator shall give notice in writing(*c*) seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *London Gazette*.

(*a*) See page 177, *ante*.

(*b*) See page 233, *ante*.

(*c*) For a form of the notice, see the third schedule (No. 45) hereto.

46. The votes of the creditors or contributories of the Company at any meeting summoned by the direction of the judge, may be given either personally or by proxy; but no creditor shall appoint a proxy(*a*) who is not a creditor of the Company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the Company.

(*a*) For a form of appointment of proxy, see the third schedule (No. 46) hereto.

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section of the said act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum(*a*) signed by the chief clerk of the judge.

(*a*) For a form of the memorandum, see the third schedule (No. 47) hereto. See, also, No. 48, for a form of the chairman's report.

Direction or Sanction of the Judge.

48. The sanction of the judge(*a*) to the drawing, accepting, making, and indorsing of any bill of exchange or promissory note by any official liquidator, shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

(*a*) See p. 183, *ante*. See, also, the third schedule hereto, Form No. 49.

49. Every application for the sanction of the judge to a compromise with any contributory(*a*) or other person indebted to the Company, shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the Company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum, signed by the chief clerk of the judge, on the agreement(*b*) of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose.

(*a*) See sect. 160 of the act, p. 245, *ante*.

(*b*) For a form of agreement of compromise, see the third schedule (No. 50) hereto; for a form of memorandum of sanction, see No. 51.

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order(*a*) shall be drawn up thereon, unless the judge shall otherwise direct.

(*a*) For a form, see the third schedule (No. 52) hereto.

Applications to the Court or Judge under sects. 137, 138, 141, 167, *and* 168, *of the Act.*

51. Every application under the 137th, 138th or 141st section of the said act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers; and every application under the 167th or 168th section of the said act shall be made by petition.

Orders.

52. All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers.

Advertisements.

53. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *London Gazette*, and in such other newspaper or newspapers, and for such number

of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

Admission of Documents.

54. Any party to any proceeding in court or chambers relating to the winding-up of a Company may, by notice in writing in the Form No. 6, in Schedule N. to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.

Affidavits.

55. Where an order shall have been made for the winding-up of any Company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

Certificate of Chief Clerk.

56. The 48th, 49th, 50th, 51st, 52nd and 55th rules of the 35th of the Consolidated General Orders, shall apply to all certificates of the chief clerk in the matter of the winding-up of any Company; nevertheless, certificates on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed, shall be filed and forthwith acted upon.

Register and File of Proceedings.

57. A register shall be kept of all proceedings in the judge's chambers in each matter, in the same manner as

required by the 57th rule of the 35th of the Consolidated General Orders, and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct.

58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any Company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him or otherwise, as the judge may from time to time direct. Every contributory of the Company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three half-pence per folio of seventy-two words; and such file shall be produced in court, or before the judge, and otherwise, as occasion may require.

Provisional Official Liquidators.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators.

Attendance and Appearance of Parties.

60. Every person, for the time being, on the list of contributories of the Company, left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the Company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the Company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

61. The judge may from time to time appoint any one or

more of the contributories, or creditors, as he thinks fit, to represent(*a*) before him, at the expense of the Company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding-up of the Company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

(*a*) In *Re Beariz Tin Company* (W. N. 1868, p. 207), the Master of the Rolls appointed a creditors' representative.

See, also, *Re Barned's Banking Company, Helbert's case* (W. N. 1868, p. 213), where the court refused to hear a creditors' representative because the order appointing him was not produced.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book(*a*) to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

(*b*) For a form of the book to be kept, see the third schedule (No. 53) hereto.

Services of Summonses, Notices, &c.

63. Services upon contributories and creditors shall be effected, except when personal service is required, by sending the notice, or a copy of the summons or order or other proceeding, through the post in a prepaid letter, addressed to the solicitor of the party to be served (if any), or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing Rule 20; and such notice, or copy summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

64. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom service is sought to be made,

has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

Termination of winding-up.

65. Upon the termination of the proceedings in chambers for the winding-up of any Company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the court or judge shall direct, the recognisance entered into by the official liquidator and his sureties may be vacated.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the judge shall direct, a certificate (*a*) shall be made by the chief clerk, that the affairs of the Company have been completely wound-up; and in case the Company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the judge for an order (*b*) that the Company be dissolved from the date of such order. (*c*)

(*a*) For a form, see the third schedule (No. 55) hereto.

(*b*) For a form of the order, see the third schedule (No. 56) hereto.

(*c*) See sects. 111, 112, and 113 of the act, p. 205, *et seq.*

67. When the proceedings for winding-up any Company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerks' Office.

Duties of Solicitor of Official Liquidator.

68. The solicitor (*a*) of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where the attendance of his solicitor is required on any proceeding in court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

(*a*) As to the appointment of a solicitor, see sect. 97 of the act, and the note under it, p. 184, *ante*. See, also, Form No. 12 in the third schedule hereto.

Forms.

69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

Fees.

70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the first schedule hereto, unless the court or judge shall otherwise specially direct.

71. The fees of court set forth and referred to in the second schedule hereto, shall be paid in relation to proceedings in the Court of Chancery under "The Companies Act, 1862," and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders.

Taxation of Costs.

72. Where an order is made in court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing-master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders.

Power of Judge.

73. The power of the court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding and to give any direction as to the course of proceeding, is unaffected by these rules.

General Directions.

74. The general practice of the court, including the course of proceeding and practice at the judges' chambers, as provided by the statute 15th and 16th Victoria, chapter 80, and the general orders of the court relative thereto, shall, in cases not provided for by "The Companies Act, 1862," or these rules, and so far as the same are applicable, and not inconsistent with the said act, or these rules, apply to all proceedings for winding-up a Company.

Application of Rules.

75. These rules apply only(*a*) to proceedings under "The Companies Act, 1862."

(*a*) See County Court Orders, 1867, *post*.

Commencement of Rules.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

Interpretation.

77. The 1st rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order; and such rules shall have the effect of, and be deemed to be general orders of the court.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART, V. C.
W. P. WOOD, V. C.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

	£	s.	d.
For preparing and drawing up every order made at chambers, and attending for same, and at the registrars' office to get same entered	0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4
For other duties performed, such of the fees on the higher scale authorised by the 2nd rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.			
Where under such regulations a fee of 3 guineas may be allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding 5 guineas.			
The fee of 2*s.* 6*d.* allowed by such regulations for notices and services, shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by the above Rule 63.			
The usual charges relating to printing, shall be allowed in lieu of copies for service where the fee for copies would exceed the charges for printing, and amount to more than 3*l.*			

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

	£	s.	d.
In the Judges' Chambers.			
For every summons	0	3	0
For every order drawn up by the chief clerk	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6
In the Registrars' Office.			
For every order made in court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the Examiners' Office.

The same fees as those directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto.

In the Record and Writ Clerks' Office, and Report Office.

Such of the fees directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto, as are applicable.

In the Taxing Masters' Office.

The same fees as those directed to be paid and collected by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto.

In the Office of the Lord Chancellor's Principal Secretary.			
For every petition	1	0	0
In the Office of the Secretary at the Rolls.			
For every petition	1	0	0

THE THIRD SCHEDULE.

FORMS.

No. 1. *Advertisement of Petition.* [Rule 2.]

In the matter of "The Companies Act, 1862"; and of the Company.

Notice is hereby given that a petition for the winding-up of the above-named Company by the Court [*or*, subject to the supervision of the court] of Chancery was, on the day of , 186 , presented to the Lord Chancellor [*or*, the Master of the Rolls] by the said Company, [*or*, by A. B., of , a creditor [*or*, contributory] of the said Company [*or*, *as the case may be*]. And that the said

petition is directed to be heard before the Vice-Chancellor, [*or*, Master of the Rolls] on the day of , 186 ; and any creditor or contributory of the said Company desirous to oppose the making of an order for the winding-up of the said Company under the above act, should appear at the time of hearing, by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D., of &c. [agents for E. and F., of &c.]
Solicitors for the petitioner.

No. 2. *Affidavit verifying Petition.* [Rule 4.]

In Chancery.
In the matter, &c.

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A., as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true. Sworn, &c.,

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No. 3. *Order for winding-up by the Court.* [25 & 26 Vict. c. 89, ss. 81, 82.]

The Master of the Rolls [*or*, Vice-Chancellor]. } day, the day of 186 . In the matter, &c.

Upon the petition of the above-named Company [*or*, A. B., of &c., a creditor [*or* contributory] of the above-named Company on the day of 186 , preferred unto the Right Honourable the Lord High Chancellor of Great Britain [*or*, Master of the Rolls], and upon hearing counsel for the petitioner, and for , and upon reading the said petition, an affidavit of (the said petitioner) filed, &c., verifying the said petition, an affidavit of L. M., filed the day of 186 , the *London Gazette*, of the day of , the *Times* newspaper of the day of [*enter any other papers*] each containing an advertisement of the said petition [*enter any other evidence*], his honour [*or*, this court] doth order, that the said Company be wound-up by this court under the provisions of "The Companies Act, 1862."

No. 4. *Order for winding-up, subject to Supervision.* [25 & 26 Vict. c. 89, ss. 147, 148.]

The Master of the Rolls [*or*, Vice-Chancellor]. } day, the day of 186 In the matter, &c.

Upon the petition, &c., his honour [*or*, this court] doth order, that the voluntary winding-up of the said Company be continued, but subject to the supervision of this court; and any of the proceedings under the said voluntary winding-up may be adopted as the judge shall think fit. And the creditors, contributories, and liquidators of the said Company, and all other persons interested, are to be at liberty to apply to the judge at chambers as there may be occasion.

No. 5. *Advertisement of Order to wind-up.* [Rule 6.]

In the matter, &c.

By an order made by the Master of the Rolls [*or*, the Vice-Chancellor] in the above matter, dated the day of , 186 , on the petition of the above-named Company [*or*, A. B., of], it was ordered that, &c. [*as in order*].

C. and D., of &c.
Solicitors for the said petitioner.

No. 6. *Advertisement of Time and Place fixed for the Appointment of Official Liquidator.* [Rule 9.]

In the matter, &c.

Notice is hereby given, that the Master of the Rolls [*or*, the Vice-Chancellor] has fixed the day of 186 , at o'clock in the noon, at his chambers in the Rolls-yard, Chancery-lane [*or*, at No. Lincoln's-inn], in the county of Middlesex, as the time and place for the appointment of an official liquidator of the above-named Company.

G. H., Chief Clerk.

No. 7. *Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 6 has been issued.*

In the matter, &c.

We, the undersigned contributories of the above-named Company for the number of shares placed opposite our respective names, hereby propose Mr. W. T., of &c., public accountant, to be the official liquidator of the said Company [and H. N., of &c., and J. P., of &c., to be his sureties].

Name.	Address.	Number of Shares held.

No. 8. *Order appointing an Official Liquidator.* [Rules 10, 11.]

Master of the Rolls [*or*, Vice-Chancellor] at chambers. , the day of , 186 .

In the matter, &c.

Upon the application, &c., and upon reading, &c., the judge doth hereby appoint R. P. H., of &c., official liquidator of the above-named Company. [*If security has not been given, add*, and it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the judge.] And it is ordered that the said R. P. H. do, on the day of , and day of 186 , and the same days in each succeeding year, leave his accounts at the chambers of the said judge. And it is ordered that all

moneys to be received by the said R. P. H. be paid by him into the Bank of England to the credit of the account of the official liquidator of the said Company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed add*, and the said judge doth declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [*or*, any one, *or*, two] of the official liquidators hereby appointed, that is to say [*describe the acts*]; and that all other acts so required or authorised to be done be done by both [*or*, all] the official liquidators hereby appointed.]

No. 9. *Order appointing a Provisional Official Liquidator.*

[Rules 10, 11, 15, 59.]

Master of the Rolls [*or*, Vice-Chancellor] at chambers. , the day of , 186 . In the matter, &c.

Upon the application, &c., and upon reading, &c., the judge doth hereby appoint R. P. H., of &c., provisionally, official liquidator of the above-named Company [*If security dispensed with add*, without security; *or, if security is to be given, add directions as to security, accounts, and payment into the bank, as in Form No.* 8]. And the said judge doth hereby limit and restrict the powers of the said R. P. H., as such provisional official liquidator, to the following acts, that is to say [*describe the acts which the provisional official liquidator is to be authorised to do*].

No. 10. *Recognisance of the Official Liquidator and Sureties.*

[Rule 10.]

186 In the matter, &c. The Master of the Rolls [*or*, Vice-Chancellor] has approved of and allowed this recognisance. G. H., Chief Clerk.

R. P. H., of &c., W. B., of &c., and T. P., of &c., before our Sovereign Lady the Queen in Her High Court of Chancery personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Right Honorable Sir John Romilly, Knight, the Master of the Rolls, and the Honorable Sir Richard Torin Kindersley, Knight, the senior Vice-Chancellor of the said court, the respective sums of lawful money of Great Britain set opposite to their respective names in the schedule hereto, to be paid to the said Sir John Romilly and Sir Richard Torin Kindersley, or one of them, or the executors or administrators of them, or one of them; and in default of payment of the said sums, the said R. P. H., W. B., and T. P., are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors, and administrators, by these presents, that the said sums shall be levied, recovered, and received of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods, and chattels, of them and every of them, wheresoever the same shall be found. Witness our Sovereign Lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, and so forth, at Westminster, the day of , 186 .

Whereas, in the matter of &c. [*take title from order to wind-up*] the Master of the Rolls [*or*, Vice-Chancellor] has by an order dated the day of , 186 , appointed the said R. P. H. official liquidator of the said Company, and has thereby directed him to give security, to be approved of by the said judge [*or*, *in case the security precedes the order appointing*, has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said Company, upon his giving security]. And whereas the said judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule hereto, and has also approved of the above-written recognisance, with the underwritten condition, as a proper security to be entered into by the said R. P. H., W. B., and T. P., pursuant to the said order and [*or*, pursuant to] the general order of the said court in that behalf; and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof. Now the condition of the above-written recognisance is such, that if the said R. P. H., his executors, or administrators, or any of them, do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as official liquidator of the said Company at such periods and in such manner as the said judge shall appoint, and pay the same as the said judge hath [by the said order] directed, or shall hereafter direct, then the above recognisance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO.

R. P. H.	... ...	———	... Thousand pounds.
W. B.	... ...	———	... Thousand pounds.
T. P.	... ...	———	... Thousand pounds.

Taken and acknowledged by the above-named R. P. H., &c., &c.

No. 11. *Affidavit of Sureties.* [Rule 10.]

In Chancery.

In the matter, &c.

We, W. B., of &c., and T. P., of &c., severally make oath, and say as follows:—

1. I, the said W. B., for myself, say that I am worth the sum of £ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P., for myself, say that I am worth the sum of £ , of &c. [as above].

Sworn, &c.

No. 12. *Sanction of Appointment of Solicitor to Official Liquidator, and Appointment.* [25 & 26 Vict. c. 89, s. 97.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] sanctions the

official liquidator appointing a solicitor, to assist him in the performance of his duties.

G. H.,
Chief Clerk.

I hereby appoint Messrs. C. and D., of &c., to be my solicitors in this matter.

Dated this day of , 186 .

R. P. H., Official Liquidator.

No. 13. *Order for Payment of Money or Delivery of Books, &c., to Official Liquidator.* [25 & 26 Vict. c. 89, ss. 100, 101.]

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. day, the day of , 186 . In the matter, &c.

Upon the application of, &c., and on reading, &c., it is ordered, that A. B., of &c., do, within four days after service hereof, pay to [*or*, deliver, convey, surrender, or transfer to or into the hands of] R. P. H., the official liquidator of the said Company, at the office of the said R. P. H., situate at &c., the sum of £ being the amount of debt appearing to be due from the said A. B., on his account with the said Company [*or*, any sum or balance, books, papers, estate, or effects], [*or*, *specifically describe the property*] now being in the hands of the said A. B., and to which the said Company is *primâ facie* entitled [*or*, *otherwise, as the case may be*].

No. 14. *Direction to open Account at the Bank of England.* [Rules, 11, 32, 36—44.]

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. day of , 186 . In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

An order, dated the day of 186 , having been made in the above matter by the Master of the Rolls [*or*, the Vice-Chancellor] for winding-up the above-named Company by the Court of Chancery, under the provisions of the said act, and R. P. H., of , having by order dated the day of 186 , been appointed official liquidator of the said Company, you are requested to open an account, to be entitled "The Account of the Official Liquidator of the Company," in your books, pursuant to the said act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by

one of the chief clerks of the said judge, whose signatures are also attached hereto.

I am, gentlemen,
Your most obedient servant.,
G. H.,
Chief Clerk.

Signatures.

R. P. H., Official Liquidator.
G. W. } Chief Clerks of the Master of
G. H. } the Rolls [*or*, Vice-Chancellor].

No. 15. *Advertisement of Appointment of Official Liquidator.* [Rule 14.]

In the matter, &c.

The Master of the Rolls [*or*, the Vice-Chancellor] has, by an order dated the day of , 186 , appointed R. P. H., of , to be official liquidator of the above-named Company.

Dated this day of , 186 .

G. H.,
Chief Clerk.

No. 16. *Advertisement for Creditors.* [Rule 20.]

In the matter of, &c.

The creditors of the above-named Company are required, on or before the day of 186 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R. P. H., of , the official liquidator of the said Company, and, if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims, at the chambers of the Master of the Rolls [*or*, the Vice-Chancellor], in the Rolls-yard, Chancery-lane [*or*, at No. , Lincoln's-inn], in the county of Middlesex, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day, the day of 186 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 186 .

G. H.,
Chief Clerk.

No. 17. *Affidavit of Official Liquidator as to Debts and Claims.* [Rule 22.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

1. I have in the paper writing now produced and shown to me, and marked with the letter A., set forth a list of all the debts and claims the

particulars of which have been sent in to me by persons making claims upon, or claiming to be creditors of the said Company, pursuant to the advertisement issued in that behalf, dated the 186 ; and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims, and examined the same with the books and documents of the said Company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said Company; and I have, in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as, in my opinion, are justly due from the said Company, and proper to be allowed without further evidence: and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

No. 18. *Exhibit referred to in Affidavit No.* 17.

A.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked A., was produced and shown to R. P. H., and is the same as is referred to in his affidavit, sworn before me this day of , 186

W. B., &c.

First Part.—Debts and Claims proper to be allowed without further evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed.	Amount proper to be allowed.	Reasons for Belief that Amounts are proper to be allowed.
				£ s. d.	£ s. d.	

Second Part.—Debts and Claims which ought to be proved by the Creditors.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.
				£ s. d.

No. 19. *Notice to Creditor of Allowance of Debt.* [Rule 23.]

In the matter, &c. [Place and date.]

Sir,—The debt claimed by you in this matter has been allowed by the judge at the sum of £ . [*If part only allowed add*, If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, *&c., as in next form.*]

I am, &c.,

To Mr. P. R. R. P. H., Official Liquidator.

No. 20. *Notice to Creditors to come in and prove their Debts.* [Rule 24.]

In the matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above-named Company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of the Master of the Rolls, in the Rolls-yard, Chancery-lane [*or*, of the Vice-Chancellor , at No. , Lincoln's-inn], in the county of Middlesex, on the day of 186 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 186 .

R. P. H., Official Liquidator.

To Mr. S. T.

No. 21. *Affidavit of Creditor in Proof of Debt.* [Rule 24.]

In Chancery.

In the matter, &c.

I, S. T., of &c., make oath, and say as follows:—

1. The above-named Company was, on the day of 186 , the date of the order for winding-up the same, and still is justly and truly indebted to me in the sum of £ for, &c. [*Describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.*]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any

part thereof [*if any security add*], except the said [*describe the security*], hereinbefore mentioned or referred to.

Sworn, &c.

No. 22. *Certificate of Chief Clerk, as to Debts and Claims.*

[Rule 28.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice-Chancellor], I hereby certify that the result of the adjudication upon debts and claims against the above-named Company, brought in pursuant to the advertisement issued in that behalf, dated the day of 186 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows:—

The debts and claims which have been allowed are set forth in the first schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £ .

I have in the first part of the said schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

I have in the second part of the said schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of 4*l.* per cent. per annum, from the day of 186 , being the date of the said order to wind-up the Company, down to the date of this certificate.

The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Debts and Claims which carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1.	J L.	29 -street London, Stationer	On Bill of Exchange, dated, &c.	£ s. d.
		Principal	£	
		Interest at £ per cent. per annum, (less Property Tax) from 186 to the date of this Certificate.	£	
		Costs of Proof ...	£	
			Total first Part. £	

Second Part.—Debts and Claims which do not carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
40	W. P.	15 -street, London.		£ s. d.	£ s. d.
		Coal Merchant	Goods sold		
		Principal ...	£50 0 0	2 0 0	54 0 0
		Costs of Proof...	2 0 0		
			Totals £		
			Add total	first Part. £	
		Total	first and second Parts. £		

THE SECOND SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				£ s. d.

Dated this day of 186 .

G. H., Chief Clerk.

Approved the day of , 186 .

No. 23. *Notice to Creditor to attend to receive Debt.* [Rule 28.]

In the matter, &c.

Sir,

Upon application at my office, No. -street, Middlesex, on or after the instant, between the hours of ten and four o'clock, you may receive a cheque for the amount of your debt, allowed in this matter as under :—

Principal ... ... £
Interest ... ... £
Costs of proof ... ... £

Total £

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 186 .

I am, &c.,
R. P. H., Official Liquidator.

To Mr. S. T.

[*Form of Order.*]

Sir,

Please to deliver to W. R. the cheque for £ referred to in the above letter as payable to me.

S. T.,
Creditor.

To Mr. R. P. H.,
Official Liquidator of the Company.

No. 24. *Affidavit in Support of List of Contributories.*

[Rule 29.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say, as follows :—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the contributories of the said Company, made out by me from the books and papers of the said Company, together with their respective addresses, and the number of shares [*or*, extent of interest], to be attributed to each ; and such list is, to the best of my knowledge, information, and belief, a true and accurate list of the contributories of the said Company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list marked A., distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list marked A., distinguished the persons who are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

No. 25. *List of Contributories referred to in Form No.* 24.

A.

In the matter, &c.

This list of contributories marked A. was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit, sworn before me this day of 186 .

W. B., &c.

First Part.—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or*, Extent of Interest].

Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or*, Extent of Interest].

No. 26. *Notice to Contributories of Appointment to settle List of Contributories.* [Rule 30.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has appointed the day of 186 , at of the clock in the noon at his chambers, in the Rolls-yard, Chancery-lane [*or*, at No. , Lincoln's-inn], in the county of Middlesex, to settle the list of the contributories of the above-named Company, made out and left at the chambers of the said judge by the official liquidator of the said Company, and you are included in such list in the character, and for the number of shares [*or*, extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said judge, including you therein.

Dated this day of 186 .

R. P. H., Official Liquidator.

To Mr. A. B. [and to Mr. C. D., his solicitor].

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or*, Extent of Interest].

No. 27. *Affidavit of Service of Notice.* [Rule 30.]

In Chancery.

In the matter, &c.

I, W. S., of &c., clerk to Messrs. C. and D., of &c., the solicitors of the official liquidator of the above-named Company, make oath, and say as follows:—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A., contain a true copy of the list of contributories of the said Company, made out and left at the chambers of the Master of the Rolls [*or*, Vice-Chancellor], by the said official liquidator, on the day of 186 , and now on the file of proceedings of the said Company, as I know from having, on the day of 186 , examined and compared the said schedule with the said list; and I have, in the seventh column of the said schedule marked A., set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 186 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said schedule marked A., except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares [*or*, extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their solicitors, according to their respective names and addresses appearing in the said schedule marked A., and, with the proper postage stamps affixed thereto as prepaid letters, into the post-office receiving house, No. in -street, in the county of , between the hours of and of the clock in the noon of the said day of .

Sworn, &c.

No. 28. *The Schedule referred to in Form No. 27.*

A.

In the matter, &c.

This schedule marked A. was produced and shown to W. S., and is the same schedule as is referred to in his affidavit, sworn before me, this day of , 186 .

W. B., &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what Character included.	6. Number of Shares [*or*, Extent of Interest].	7. Names and Addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the Affidavit of W. S., to which this schedule is an exhibit.

No. 29. *Supplemental List of Contributories, and Affidavit in Support.*

[Rule 29.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

1. Since leaving at the chambers of the judge the list of the contributories in this matter, on the day of 186 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B., are, or have been holders of shares in [*or*, members of] the said Company, and to the best of my judgment, information, and belief, such persons are contributories of the said Company.

2. The said supplemental list marked B. contains the names of such persons, together with their respective addresses, and the number of shares [*or*, extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information, and belief, true and accurate.

3. I have, in the first part of the said list marked B., distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked B., distinguished such of the said persons as are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

No. 30. *Supplemental List of Contributories referred to in Form No.* 29. B.

In the matter, &c.

This supplemental list of contributories, marked B., was produced and shown to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of 186 .

W. B., &c.

Note.—The Supplemental List is to be made out in the same form as the Original List, Form No. 25.

No. 31. *Certificate of Chief Clerk of Settlement of the List of Contributories.* [Rule 31.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice-Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named Company, made out and left at the chambers of the said judge by the official liquidator of the said Company on the day of 186 , pursuant to the above statute and the general order of this court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said Company in respect of the number of shares [*or*, extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list, as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth opposite the name of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or*, Extent of Interest].	Date when included in the List.

Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what Charscter included.	Number of Shares [*or*, Extent of Interest].	Date when included in the List.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included	Number of Shares [*or*, Extent of Interest.]	Date when excluded from the List.

Dated this day of 186 .

G. H.,
Chief Clerk.

Approved the
day of 186 .

No. 32. *Order on Application to vary List.* [Rule 29.]

Master of the Rolls [*or*, Vice-Chancellor] at chambers. } day, the day of 186 .
In the matter. &c.

Upon the application of W. N. to review the list of contributories of the said Company, in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c., it is ordered, that the name of the said W. N. be excluded from the said list of contributories [*or*, the judge doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H., the official liquidator of the said Company, his costs of this application, to be taxed by the taxing master in case the parties differ].

No. 33. *Affidavit of Official Liquidator in Support of Proposal for Call.* [Rule 33.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

1. I have, in the schedule now produced and shown to me, and marked with the letter A., set forth a statement, showing the amount due in respect of the debts allowed against the said Company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sum of £ and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the contributories of the said Company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. It appears by the chief clerk's certificate, dated the day of 186 , that persons have been settled on the list of contributories of the said Company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said Company, and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said Company mentioned in the said Schedule A., and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realising the amount required as before mentioned, it is necessary that a call of per share should be made.

Sworn, &c.

No. 34. *Summons for intended Call.* [Rule 33.]

In the matter, &c.

Let all parties concerned attend at my chambers in the Rolls-yard, Chancery-lane [*or*, at No. , Lincoln's-inn], in the county of Middlesex, on day, the day of 186 , at of the clock, in the noon, on the hearing of an application on the part of the official liquidator of the above-named Company, that a call to the amount of £ per share may be made on all the contributories [*or*, *if upon any particular class, specify the same*] of the said Company.

JOHN ROMILLY, Master of the Rolls,
or
X. Y., Vice-Chancellor.

This summons was taken out by A. and B., of , in the county of , solicitors for the said official liquidator.

To Mr. A. B., of &c., a contributory of the said Company proposed to be included in the said call.

No. 35. *Advertisement of intended Call.* [Rule 33.]

In the matter, &c.

By direction of the Master of the Rolls [*or*, Vice-Chancellor] notice is hereby given that the said judge has appointed the day of , 186 , at o'clock in the noon, at his chambers in the Rolls-yard, &c., to make a call on all the contributories of the said Company [*or, as the case may be*], and that the official liquidator of the said Company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 186 .

G. H.,
Chief Clerk.

No. 36. *General Order for a Call.* [Rule 34.]

Master of the Rolls [*or*, Vice-Chancellor] at chambers. the day of 186 .

In the matter, &c.

Upon the application of the official liquidator of the above-named Company, and upon reading two orders, dated the day of , 186 , and the day of 186 , the chief clerk's certificate, dated the day of , 186 , affidavit of the said official liquidator, filed 186 , and the exhibit marked A. therein referred to, and an affidavit of . filed 186 , it is ordered, that a call of pounds per share be made on all the contributories of the said Company [*or, as the case may be*]. And it is ordered, that each such contributory do on or before the day of 186 , pay into the Bank of England, to the account of the official liquidator of the Company, the amount which will be due from him or her in respect of such call.

No. 37. *Notice to be served with the General Order for a Call.* [Rule 34.]

In the matter, &c.

The amount due from you, A. B., in respect of the call made by the above [*or*, within] order, is the sum of £ , which sum is to be paid by you into the Bank of England, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment and of the date thereof to be given

to me as the official liquidator of the said Company, at my office, No. -street, in the county of Middlesex.

Dated this day of 186 .

R. P. H.,
Official Liquidator.

To Mr. A. B.

No. 38. *Affidavit in Support of Application for Order for Payment of Call due from Contributories.* [Rule 35.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

1. None of the contributories of the said Company whose names are set forth in the schedule hereunto annexed, marked A., have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, in pursuance of the order of the judge in that behalf, dated the day of , 186 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule, are the true amounts due and owing by such contributories respectively in respect of the said call.

Sworn, &c.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Note.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos. 36 *and* 37*) will be required.*

No. 39. *Order for Payment of Call due from a Contributory.* [Rule 35.]

The Master of the Rolls [*or*, Vice-Chancellor at chambers.] day, the day of 186 .

In the matter, &c.

Upon the application of the official liquidator of the above-named Company, and upon reading the order, dated the day of , 186 , an affidavit of filed the day of 186 , and an affidavit of the said official liquidator, filed the day of 186 , it is ordered, that C. D., of &c. [*or* E. F., of &c.,

the legal personal representative of L. M., late of &c., deceased], one of the contributories of the said Company [*or if against several contributories*, the several persons named in the second column of the schedule to this order being respectively contributories of the said Company] do, on or before the day of 186 , or within four days after service of this order pay into the Bank of England, to the account of the official liquidator of the Company [*or*, to A. B., the official liquidator of the said Company at his office No. -street, in the county of Middlesex], the sum of £ [*if against a legal personal representative add*], out of the assets of the said L. M., deceased in his hands as such legal personal representative as aforesaid to be administered in a due course of administration, if the said E. F. has in his hands so much to be administered; *or, if against several contributories*, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto], such sum [*or*, sums] being the amount [*or*, amounts] due from the said C. D. [*or*, L. M.] *or*, the said several persons respectively] in respect of the call of £ per share made by the said order dated the day of 186 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due
					£ s. d.

Note.—The copy for service of the above order must be endorsed, as required by the 23rd Consolidated Order, rule 10.

No. 40. *Notice to be endorsed on, or served with, every Order directing Payment of Money into the Bank of England.* [Rule 39.]

You can make the payment directed by the within [*or*, above] order at the Bank of England in person, &c. [*as in the Form No.* 37].

R. P. H.,
Official Liquidator.

To Mr.

No. 41. *Certificate of Payment of Money into the Bank of England.* . [Rule 39.]

In the matter, &c.

No.

day of , 186 .

I hereby certify that C. D., of &c., has this day paid into the Bank of England the sum of , to be placed to the credit of the official

liquidator of the Company, pursuant to an order dated the day of , 186 .

For the Governor and Company of the Bank of England,

H. M.,
Cashier.

No. 42. *Affidavit of Service of Order for Payment of Call.*
[Rule 35.]

In Chancery.

In the matter, &c.

I, J. B., of &c., make oath, and say as follows:

1. I did, on the day of 186 , personally serve G. F., of , in the county of , &c., with an order made in this matter by his honour, the Master of the Rolls [*or*, Vice-Chancellor], dated the day of 186 , whereby it was ordered [*set out the order in the past tense*] by delivering to and leaving with the said G. F. at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

2. There was endorsed on the said copy, when so served, the following words, that is to say, "If you, the within-named G. F., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the serjeant-at-arms attending the same court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order."

Sworn, &c.

No. 43. *Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England.* [Rule 40.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:

1. G. F., the person named in an order made in this matter by his honour the Master of the Rolls [*or*, Vice-Chancellor], dated day of , 186 , has not paid into the Bank of England, to the account of the official liquidator of the Company, the whole or any part of the sum of £ as by the said order directed.

[*Or, in case of several parties.*]

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by his honour the Master of the Rolls [*or*, Vice-Chancellor], of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of England to the account of the official liquidator of the Company, the whole or any part of the several sums of money set opposite to their respective names in the said schedule hereunder written, as by the said orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my

having this day ascertained, by inquiry at the said bank, that such payment [*or*, payments] has [*or*, have] not been made, and seen the certificate of payment in, numbered [*or*, several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates] furnished by me to the cashier of the said bank for delivery to the said G. F. [*or*, several persons respectively] upon such payment [*or*, payments] being made, still in the hands of the cashier of the said bank. No notice [*or*, notices] of such payment [*or*, payments] having been made has [*or*, have] been given to me by the said G. F. [*or*, several persons respectively].

Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ *s.* *d.*		

No. 44. *Request to invest Cash in Government Stock or Exchequer Bills.* [Rule 43.]

In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

It appearing that the sum of £ cash is standing to the credit of the account of the official liquidator of the above-named Company, you are hereby requested to invest the sum of £ , part thereof, in the purchase of Bank 3*l.* per Cent. Annuities [*or* Reduced 3*l.* per Cent. Annuities, *or*, New 3*l.* per Cent. Annuities, *or*, New 2*l.* 10*s.* per Cent. Annuities] in the name of R. P. H., of &c., the official liquidator of the said Company, [*or*, in the purchase of exchequer bills, and to deposit such exchequer bills in the Bank of England, in the name and on behalf of the said official liquidator.] The said annuities [*or*, exchequer bills] are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said Company, and countersigned by the chief clerk of the Master of the Rolls [*or*, Vice-Chancellor], or under an order to be made by the said judge.

Dated this day of , 186 .

I am, gentlemen,

Your most obedient servant,

R. P. H.,

Official Liquidator.

Countersigned,

G. H., Chief Clerk of the Master of the Rolls [*or*, Vice-Chancellor].

No. 45. *Notice [or Advertisement] of Meeting of Creditors or Contributories.* [Rules 45, 46.]

In the matter, &c.

Notice is hereby given that the Master of the Rolls [*or*, Vice-Chancellor] has directed a meeting of the creditors [*or*, contributories] of the above-named Company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding-up of the said Company,] and that such meeting will be held on day, the day of 186 , at o'clock in the noon, at in the county of , at which time and place all the creditors [*or* contributories] of the said Company are requested to attend. [The said judge has appointed H. T., of &c., to act as chairman of such meeting.]

Dated this day 186 .

R. P. H.,
Official Liquidator.

No. 46. *Appointment of Proxy to vote at Meeting of Creditors or Contributories.* [Rule 46.]

In the matter, &c.

I, W. S., of in the county of being a creditor [*or*, contributory] of the above-named Company, hereby appoint of as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or*, contributories] of the said Company, summoned by direction of the Master of the Rolls [*or*, Vice-Chancellor], to be held on the day of and at any adjournment thereof.

As witness my hand this day of 186 .

W. S.

Signed by the said W. S. in the presence of }

J. M., of &c.

No. 47. *Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories.* [Rule 47.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has appointed Mr. H. T., of &c., one of the creditors [*or*, contributories] of the above-named Company, to act as chairman of a meeting of the creditors [*or*, contributories] of the said Company, summoned by direction of the said judge, pursuant to the above statute, to be held on day, the day of , 186 , at o'clock, in the noon, at , in the county of , and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [*or*, contributories] of the said Company as to

[*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or*, contributories] may be given either personally or by proxy.

Dated this day of 186 .

G. H.,
Chief Clerk.

No. 48. *Chairman's Report of Result of Meeting of Creditors or Contributories.* [Rules 45, 46, 47.]

In the matter, &c.

I, H. T., the person appointed by the Master of the Rolls [*or*, Vice-Chancellor] to act as chairman of a meeting of the creditors, [*or*, contributories] of the above-named Company, summoned by advertisement [*or*, notice], dated the day of 186 , and held on the day of 186 , at in the county of , do hereby report to the said judge the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said Company have been allowed, amounting in the whole to the value of £ [*or*, by contributories, holding in the whole shares in the said Company, and entitled respectively by the regulations of the Company, to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or*, contributories] of the said Company approved of the proposal of the official liquidator of the said Company, that, &c. [*as the case may be*], and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [*or*, should not] be adopted and carried into effect. [*or*, The result of the voting upon such question was as follows:—

The undermentioned creditors [*or*, contributories] voted in favour of the said proposal being adopted and carried into effect:—

Name of Creditor [*or* Contributory].	Address.	Value of Debt [*or*, Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

The undermentioned creditors [*or*, contributories] voted against the said proposal being adopted and carried into effect:—

Name of Creditor [*or*, Contributory].	Address.	Value of Debt [*or*, Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

Dated this day of 186 .

(Signed) H. T.,
Chairman.

No. 49. *Memorandum of Sanction of Judge to accepting Bill of Exchange.* [Rule 48.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor], has sanctioned the acceptance of this bill of exchange by the official liquidator on behalf of the said Company.

G. H.,
Chief Clerk.

No. 50. *Memorandum of Agreement of Compromise with a Contributory.* [Rule 49.]

In the matter, &c.

Memorandum of agreement entered into this day of 186 , between R. P. H., of &c., the official liquidator of the above-named Company of the one part, and S. B., of &c., one of the contributories of the said Company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said Company as a contributory in respect of shares in the said Company, and whereas, by an order made by the Master of the Rolls [*or*, Vice-Chanceller], dated the day of , 186 , a call of £ per share was made on all the contributories of the said Company, and there is now due from the said S. B. to the said Company the sum of £ in respect of the said call. And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever, as a contributory of the said Company. And whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said Company, hath, in exercise of the power for that purpose given to him by the above statute,

agreed to accept the same, subject to the sanction of the said judge and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto:

1st. That the said official liquidator shall, before the day of next, apply to the said judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said judge the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said official liquidator on behalf of the said Company, or in such manner as the said judge may direct, the said shares held by the said S. B., in the said Company, and all claim and demand whatsoever which the said S. B. has, or may have, against the Company in respect of the said shares, or the distribution of the assets of the said Company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and he deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said Company, or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said Company.

4th. That in case this agreement shall not be sanctioned by the said judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B., to enforce payment of the said sum of £ or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H., Official Liquidator.
S. B.

Witness to the signatures of the said R. P. H. and S. B.
C. D., of &c.

No. 51. *Memorandum of Sanction of Judge to Agreement of Compromise.*
[Rule 49.]

In the matter, &c.
The Master of the Rolls [*or*, Vice-Chancellor] has sanctioned this agreement of compromise.

G. H.,
Chief Clerk.

No. 52. *Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator.* [Rule 50.]

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. } day of 186 .
In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] doth hereby sanction [*or*, has sanctioned] the following proceedings being taken [*or*, acts being done] by the official liquidator of the above-named Company, namely [*state the proceedings to be taken or acts to be done as*], the bringing [*or*, instituting] and prosecuting an action at law [*or*, suit in equity], in the name and on behalf of the said Company, against [*or*, defending an action at law [*or*, suit in equity] brought [*or*, instituted] against the said Company by K. M., of &c., to recover a debt or sum of £ alleged to be due from [*or*, to] the said K. M. to [*or*, from] the said Company, &c.

G. H.,
Chief Clerk.

No. 53. *Appearance Book.* [Rule 62.]

In the matter, &c.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor or Contributory.	If he appears in Person, his Address for Service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt [*or*, Number of Shares].

No. 54. *Summons for Persons to attend at Chambers to be examined.* [25 & 26 Vict. c. 89, s. 115.]

In Chancery.
In the matter, &c.

A. B., of &c., and E. F., of &c., are hereby severally summoned to attend at the chambers of the Master of the Rolls [*or*, Vice-Chancellor], in the Rolls-yard, Chancery-lane [*or*, No. Lincoln's-inn], in the county of Middlesex, on day of , 186 , at of the clock in the noon to be examined on the part of the official liquidator [*or*, of W. D., of &c.], for the purpose of proceedings directed by the Master of the Rolls [*or*, the said Vice-Chancellor] to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*] and all other books,

papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named Company].

Dated this day of 186 .

G. H.,
Chief Clerk.

This summons was taken out by Messrs. C. and D., of , in the county of , solicitors for the official liquidator [*or*, for the said W. D.]

No. 55. *Certificate of the Company being completely wound-up and of the Official Liquidator having passed his final Account.* [Rule 66.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice-Chancellor], I hereby certify that R. P. H., the official liquidator of the above-named Company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [*or*, from] the said official liquidator has been paid in the manner directed by the order dated the day of , 186 . And that the affairs of the said Company have been completely wound-up. The evidence produced, &c.

Dated this day of 186 .

G. H.,
Chief Clerk.

Approved the day of , 186 .

No. 56. *Order to dissolve the Company.* [Rule 66.]

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. } , the day of 186 . In the matter, &c.

Upon the application of the official liquidator of the above-named Company, and upon reading an order dated the day of , and the chief clerk's certificate, dated the day of , whereby it appears that the affairs of the said Company have been completely wound-up, and that the balance of £ , due from [*or*, to] the official liquidator, has been paid in manner directed by the said order, it is ordered that the said Company be dissolved, as from this day of , 186 , and that the recognisance dated the day of , 186 , entered into by the said official liquidator, together with W. B. and T. P., his sureties, be vacated.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART, V. C.
W. P. WOOD, V. C.

GENERAL RULES AND ORDERS

FOR REGULATING THE

PRACTICE, FEES, AND COSTS ON APPEALS

TO THE

LORD WARDEN OF THE STANNARIES

FROM THE COURT OF THE VICE-WARDEN.

THE Most Noble HENRY PELHAM, Duke of Newcastle, Warden of the Stannaries of Cornwall and Devon, and EDWARD SMIRKE, Esquire, Vice-Warden of the same Stannaries, with the consent and approval of the Right Honorable RICHARD BARON WESTBURY, Lord High Chancellor of Great Britain; of the Right Honorable Sir GEORGE JAMES TURNER, Knight, one of the Lords Justices of the Court of Appeal in Chancery; and of the Right Honorable Sir WILLIAM ERLE, Knight, Lord Chief Justice of the Court of Common Pleas, testified by their several signatures subscribed hereto, do hereby, in pursuance and execution of the powers and authorities in this behalf given to them by the Act of the 18th Victoria, chapter 32, and by "The Companies Act, 1862," and of all other powers and authorities enabling them in this behalf—order and direct that the several rules, orders and regulations hereinafter set forth (together with the schedule of forms and table of fees thereto annexed) shall henceforth be the Rules and Orders for regulating the practice, fees, and costs on all appeals to the Lord Warden of the said Stannaries, and also for regulating so much of the practice, fees, and costs as relates to proceedings incidental to such appeals, had or taken in the court of the vice-warden of the Stannaries—that is to say:—

I.

Any party desiring to appeal to the Lord Warden of the Stannaries from a decree, order, judgment or decision of the vice-warden, is to notify his intention to prosecute such appeal by a notice in writing to the registrar of the court

of the vice-warden, within the times following—that is to say:—

In the case of an order or decision made or given in the matter of the winding-up of a Company under "The Companies Act, 1862," within three weeks after the order complained of has been made, unless the time be extended by the Court of Appeal; and in all other cases, within thirty days after the day on which the vice-warden shall, in open court, have made the order or pronounced the judgment appealed from, or on which the registrar shall have notified such judgment to the parties, their solicitors, attorneys or agents, in the ordinary course of procedure of the court of the vice-warden.

Such notices may be in the Forms A. or B. in the schedule, or to the same effect.

II.

The bond to the registrar entered into by the appellant, under the provisions of the act 18th Vict. c. 32, s. 26, is to be in the Form C. in the schedule annexed. The time prefixed therein is to be named by the vice-warden on the application of the registrar to him.

III.

The appeal is to be by petition signed by the appellant, his attorney, solicitor, or agent, and addressed to the Lord Warden. In it only the decree, order, judgment, or decision of the court below, complained of, is to be set forth, together with the particular causes or grounds of appeal relied upon by the appellant without any other or further recitals, details, or allegations than are reasonably necessary to show the general nature of the cause or matter in the court below in which the decree, &c., was made. Forms of petition will be found in the schedule annexed—letters D. and E.

IV.

The petition is to be signed by some one counsel who was engaged in the cause or matter in the court below, or has advised on the appeal, who shall also state in writing that there is, in his opinion, reasonable ground of appeal.

V.

If the vice-warden shall think fit to indorse on the petition that the decision of the Court of Appeal on the causes or grounds of appeal relied upon in it, or any of them, is

desirable for the general guidance of the court below in like cases, the signature of counsel may be dispensed with.

VI.

A notice of appeal and a copy of the petition of appeal shall, before it is lodged, be served on the party or parties in whose favour the decree, order, judgment, or decision appealed from, has been made or pronounced, or on his or their solicitors, attorneys, or agents.

The appeal is to be lodged with the secretary of the Lord Warden at the office of the Duchy of Cornwall in London, during office hours, on or before the day prefixed.

VII.

At the time of lodging the appeal, the appellant is to leave with the secretary an affidavit, that notice of appeal and a copy of the petition of appeal have been served on the party or parties in whose favour the decree, order, judgment or decision was made or pronounced, or on his or their solicitors, attorneys or agents; and must also then produce a certificate of the registrar of the court below that all necessary conditions and provisions as to notice of appeal, security by bond, the appealable value or amount of the matter in question, or otherwise, have been satisfied and complied with.

And the registrar may, in and by such certificate, either certify such satisfaction and compliance generally, or in case of reasonable doubt, may certify specially such facts as may enable the Court of Appeal to judge on the hearing of the appeal, whether such conditions and provisions have, in point of law, been sufficiently satisfied and complied with.

VIII.

Upon the receipt and allowance of the petition of appeal by the Lord Warden, the secretary of the Lord Warden is to obtain his indorsement appointing a day for hearing it, or (in the cases within "The Companies Act, 1862") remitting the same to be heard and determined by the Court of Appeal in Chancery, or remitting it under the 18th Vict. c. 32, s. 26, to the Judicial Committee of the Privy Council, as the Lord Warden may think fit.

IX.

After such appointment or remittance, the secretary of the Lord Warden is to inform the registrar by notice in

writing of the day so appointed, or of the remittance so made, and the vice-warden is without delay to cause to be transmitted to the Court of Appeal such of the records, memoranda, and proceedings in his court in the cause or matter in question, and also such documents and papers therein in the custody of the court, as shall appear to the vice-warden pertinent and material for the determination of the appeal, and also such other records, memoranda, proceedings, documents, and papers (if any) as the Court of Appeal, or the parties appellant or respondent, shall or may require for production at the hearing of the appeal, subject always to the award and order of the Court of Appeal as to the payment of any costs occasioned by the transmission or production of any such records, &c., as may have been transmitted or produced at the special request of the said parties to the appeal or of either of them.

X.

The vice-warden shall also certify to the Court of Appeal all evidence pertinent to the matters of appeal, whether contained in written affidavits, depositions, or examinations used or referred to on the trial or hearing in the court below in the cause or matter there pending; and also all oral evidence taken in due course of practice either before the registrar of the court below or before the vice-warden in the same cause or matter, and appearing on the notes of the vice-warden, who shall also send a copy of the written judgment (if any) which may have been pronounced upon the matters under appeal.

XI.

The parties to the appeal are to serve such notices and apply for such orders, either upon motion or petition to the Court of Appeal, as may be necessary for procuring the production at the hearing of such documents and papers as they may respectively desire to produce or give in evidence, and the attendance of any witnesses whom the Court of Appeal may, in its discretion, think fit to examine.

XII.

The order or judgment of the Lord Warden or other Court of Appeal is to be remitted or notified to the vice-warden, to be by him carried into effect and enforced, if need be, according to the course and practice of his court; and the said order or judgment may, for that purpose, be made an order

or judgment of the court below, and recorded, and, if need be, enforced accordingly.

XIII.

If neither party to the appeal shall appear on the appeal being called on for hearing, it will be dismissed without costs on either side.

If the appellant alone makes default, the appeal will be dismissed with costs.

If the appellant alone appears, the hearing is to proceed *ex parte*, and the court will make such order as shall, under the circumstances, appear to it to be just.

And where, upon the hearing of any appeal, it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court of Appeal, and which, according to its practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as such court shall think fit to award.

XIV.

In all proceedings in any appeal from a decree, order, judgment, or decision of the vice-warden, matters of mere form may be disregarded or amended, if need be, by the Court of Appeal, and all questions of costs touching the appeal, including the costs of transmitting or producing documents in the custody of the court below, will be in the discretion of the Court of Appeal, and may be referred for taxation either to the registrar of the court of the vice-warden, or to a taxing officer of the Court of Appeal.

XV.

The petition and the decree, order, judgment and other process or proceedings in or of the Court of Appeal, so far as any are made, issued or taken by or before the Lord Warden, are to be recorded in books kept in the office of the Duchy of Cornwall, or some other proper place of deposit assigned by the Lord Warden.

The following schedule of forms and annexed table of fees, are to be used and taken in proceedings on and incidental to appeals to the Lord Warden, and no other fees are to be taken thereon.

A.

Form of Notice of Appeal in a Cause.

In the Court of the Vice-Warden of the Stannaries. Stannaries of Cornwall [*or*, Devon].

Between A. B. Plaintiff,
and
C. D., E. F., &c. Defendants.

To W. M., Esq., registrar of the above-named court.

I, A. B. [plaintiff *or* defendant], in the above cause, hereby give you notice that it is my intention to prosecute an appeal by petition to the Lord Warden of the Stannaries from the decree [order, judgment *or* decision] of the court of the vice-warden in this cause made [*or*, pronounced] on the day of last past, and I hereby notify to you that I am ready and offer to give you such security as is required by the "Act to amend and extend the Jurisdiction of the Stannary Court," 18 Vict. c. 32.

A. B., plaintiff in the above cause.
X. Y., the solicitor [*or* attorney] of the said A. B.

[The above notice will serve for a cause either on the equity or the common law side of the court.]

B.

Form of Notice of Appeal in the Matter of winding-up under "The Companies Act, 1862."

In the court, &c. [as above, A.]
Stannaries of Cornwall [*or*, Devon].

In the matter of "The Companies Act, 1862,"
and
In the matter of the Mining Company.

To W. M., Esq., registrar, &c. [as above.]

I, A. B., being [*or*, claiming to be] a creditor of the above company, hereby give you notice that it is my intention to prosecute an appeal by petition to the Lord Warden, &c., from the order [*or*, decision] of the court of the vice-warden, made [*or*, pronounced] in this matter on the day of last past, whereby my claim as such creditor was excluded from proof; and I hereby notify that I am ready, &c. [as in Form A.]

Signed, &c.

[In like manner a person inserted on the list of contributories may notify his intention to appeal. So an official liquidator, or the contributory or creditor who presented the petition to wind-up, or other person having the conduct of the proceedings under the order to wind-up where no liquidator has been appointed, or any other person competent to appeal.]

C.

Form of Bond to the Registrar for Prosecution of an Appeal, &c.

[Heading in the cause or matter as the case may be as above, A. and B.]

Know all men by these presents that I, A. B., of , am held and firmly bound to W. M., Esq., registrar of the court of the vice-warden of the Stannaries, in the sum of , of lawful money

of Great Britain, to be paid to the said W. M., or his certain attorneys, executors, administrators, or assigns; for which payment I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seal. Dated in the year .

Whereas the said A. B. did, on , give to the said registrar a notice in writing of his intention to prosecute an appeal to the Lord Warden of the Stannaries from a certain decree [order, judgment, *or*, decision] of the court of the vice-warden of the Stannaries, in a cause of [*or*, a matter of], made [*or*, pronounced] on the day of , and did then offer to give such further security by bond as is required by the Act of Parliament in that behalf; and whereas, by an order made on the day of , the said vice-warden has prefixed the day of , in, &c., as the day on or before which the said A. B. is to lodge his petition of appeal with the secretary of the Lord Warden, and proceed to prosecute the same in due course of law:

Now the condition of the above bond is such that if the above A. B. shall lodge his petition of appeal with the secretary of the Lord Warden on or before the day of instant, and comply with all needful conditions incidental to such petition and appeal and the lodging thereof, and shall thereupon proceed to prosecute the same in due course of law, and according to the practice of the Court of Appeal, whether the same be heard and determined by the court of the Lord Warden, or by such other court of appeal to which the same may be lawfully remitted by the Lord Warden, with all reasonable expedition, and shall and will abide by and perform the final order and award of the Court of Appeal, made upon such petition and appeal, then the said bond is to be void; otherwise to remain in full force and effect.

Signed and delivered by the above-named A. B., in the presence of C. B. (his attorney *or* solicitor).

D.

Form of Petition of Appeal, in ordinary causes, on the equity or common law side of the Court below.

In the Court of Appeal of the Lord Warden of the Stannaries.
Stannaries of Cornwall [*or*, Devon].

Between A. B. Plaintiff,
and
C. D. Defendant.

To the Most Noble Henry Pelham, Duke of Newcastle,
Lord Warden of the Stannaries.

The humble petition and appeal of the above-named plaintiff [*or*, defendant].

Sheweth,—

That A. B., the plaintiff in the above cause, being the purser of a certain mining Company called situate within the Stannaries of Cornwall [*or*, Devon], filed his customary petition on the equity side of the court of the vice-warden of the Stannaries on the day of , against the said C. D., for payment of the contribution of the said C. D. towards the expenses of working the said mine in which the said C. D. was then an adventurer or shareholder.

That such proceedings were, thereupon had and taken that the vice-warden on the day of made the order following in the said cause [*set out the order complained of*].

That your petitioner is aggrieved by the said order, and is advised that the same is erroneous and contrary to law; and he sets forth and shows the following particular causes or grounds of appeal from the said order, that is to say—

[*Here specify the causes particularly relied on.*]

Your petitioner prays that your grace will be pleased to appoint a day and place for hearing this petition, and direct that service of notice of such appointment on the solicitor of [*the respondent*] shall be good service on [*the respondent*] and that your grace will be pleased on such hearing to reverse or vary the said order so complained of, and grant such other or further relief as to your grace shall seem fit.

Signed (*the appellant*).

[In like manner a party may appeal from the judgment of the court below in a cause on the common law side of the court, or from a refusal to grant a new trial, or for misdirection, or the reception or rejection of evidence, &c.]

E.

Petition in a Matter of winding-up under "The Companies Act, 1862."

[Heading of petition as above, D.]

In the court, &c.

Stannaries of Cornwall [*or*, Devon].

In the matter of "The Companies Act, 1862,"

and

In the matter of the Mining Company (Limited).

To the Most Noble, &c.

The humble petition and appeal of A. B. of

Sheweth,—

That on a petition presented to the vice-warden of the Stannaries by C. D., a contribntory and shareholder of and in the above Company, and by E. F., claiming to be a creditor of the same Company, an order of the vice-warden was made on the day of to wind-up the said Company, being a Company duly registered under the act with limited liability, within the jurisdiction of the court of the said vice-warden [*or*, being an unregistered Company, within the intent and meaning of "The Companies Act, 1862," Part VIII.]

That upon making out and settling a list of the contributories of the said Company the petitioner was included in the said list, and upon applying to the vice-warden to vary the said list by omitting your petitioner's name therefrom, the court decided that your petitioner's name had been rightly inserted in such list, and made the order following: [*Insert the order declining to vary the list.*]

That your petitioner is aggrieved by the said order, and is advised that the retention of his name on the list is contrary to law, and he sets forth and shows the following particular causes and grounds of appeal from the said order; that is to say:—

[*Here set out the causes of appeal relied upon, exempli gratiâ.*]

That the petitioner had, before the order to wind-up, *bonâ fide* trans-

ferred to a third person, or surrendered and relinquished to the Company, all his shares and interest therein; and by reason thereof, and hy the constitution of the Company, ceased to be contributory to the assets of the Company, or liable to creditors, &c.

[Add other grounds, if any, on which, in the opinion of the petitioner, his name ought not to have been included in the list of contributories.]

SCHEDULE OF FEES

PAYABLE ON APPEALS TO THE LORD WARDEN OF THE STANNARIES TO BE PAID TO THE LORD WARDEN'S SECRETARY.

Fees payable on lodging the Petition of Appeal.

	£	s.	d.
For perusal, examination, and allowance of every petition of appeal and copy, and of the registrar's certificate and affidavit of service of petition, and recording the appeal ...	2	2	0
For drawing order for appointment for hearing, or fiat remitting the appeal, and attendance on the Lord Warden therewith (to inclnde the fees for notices to the Registrar of the Stannaries Court and the parties appellant, and for transmission of papers in case of remittance of the appeal) ...	1	6	8

Fees payable in Case of the Appeal being heard by the Lord Warden.

Attending court on the hearing, per diem	2	2	0
Drawing minutes of order, per folio	0	1	0
For each fair copy for parties, per folio	0	0	4
Attending settling (to include any adjourned appointment) ...	1	1	0
Drawing and engrossing order, per folio	0	0	8
Attending passing (to include any adjourned appointment) ...	0	13	4
Entering order, per folio...	0	1	6
Office copy for registrar of court below, or for the parties, per folio	0	1	0

NOTE.—The above fees to be payable for attendances, &c., in respect of any interim order.

Fees for Searches, and for Inspection of and Attendances with Documents.

Upon every application to inspect a record, and for inspecting same	0	2	0
Upon every application to inspect exhibits, or deposited documents, if not more than one hour	0	5	0
If more than one hour, per diem	0	10	0
Upon every application for the attendance of any officer other than the registrar of the court below, or his deputy in any court of law or equity, per diem, and for his attendance, besides reasonable and necessary expenses of the officer ...	1	0	0

	£	s.	d.
Attendance of the registrar of the court below, or his deputy, on the hearing, with or without original records or documents in the custody of the court below when such attendance shall be required by the Court of Appeal, per diem (besides reasonable travelling and necessary expenses) ...	2	2	0

(Signed) NEWCASTLE, Warden of the Stannaries.
EDWARD SMIRKE, Vice-Warden.

Signed, in testimony of consent and approval.
WESTBURY, C.
G. J. TURNER, L. J.
W. ERLE, C. J.

APPENDIX

CONTAINING THE STATUTORY ENACTMENTS UNDER WHICH THE FOREGOING GENERAL RULES AND ORDERS HAVE BEEN MADE.

No. 1.

"*An Act to amend and extend the Jurisdiction of the Stannary Court,*" 18 Vict. c. 32.—[15th June 1855.]

SECT. XXVI.

Regulation of Appeals.

The provisions contained in the act passed in the session of Parliament holden in the sixth and seventh years of the reign of King William the fourth, chapter one hundred and six, and in the act passed in the session of Parliament holden in the second and third years of the reign of Her present Majesty, chapter fifty-eight, touching appeals to the Lord Warden, shall be repealed, and henceforth from all decrees and orders of the vice-warden on the equity side of his court, and from all judgments of the vice-warden on the common law side thereof, there shall lie an appeal to the Lord Warden, who shall have power to affirm, vary, or reverse the decree, order, or judgment wholly or in part, or to dismiss the appeal, or to direct a re-hearing or a new trial in the court below, and to make such order or orders touching the costs in the cause as to him shall seem fit; and the decree, order, or judgment of the Lord Warden on such appeal shall be remitted to the vice-warden to be by him carried into effect and enforced, if need be, according to the course and practice of the court; and upon hearing such appeal, it shall not be competent for the parties to produce fresh evidence in the cause, or to call upon the Lord Warden to hear any witnesses in the cause, unless he shall, in his discretion, think fit to do so; but the decree, order, or judgment of the Lord Warden may proceed on the state of facts appearing on the notes of the trial below certified by the vice-warden, or agreed upon by the parties; and the vice-warden shall certify such notes accordingly, and transmit to the Lord Warden a record of the proceedings in his court, and all documents and papers in the cause in the custody of the court; and the parties before the Lord Warden shall

produce all the documents and papers produced on the trial below. On the hearing and decision of the appeal, the Lord Warden shall be assisted by two or more assessors, who shall be members of the Judicial Committee of the Privy Council or judges of the High Court of Chancery or Courts of Common Law at Westminster; and the decree, order, or judgment of the Lord Warden in the Court of Appeal so constituted, shall be subject to a final appeal to the Judicial Committee of the Privy Council, who shall have power to hear and determine the same. And it shall be lawful for the Lord Warden to remit a cause pending before him on appeal at once for the determination of the said Judicial Committee, without pronouncing any previous judgment thereon. Provided that no appeal shall be allowed in any case where the debt or damages sought to be recovered shall not exceed twenty pounds, and where no question of jurisdiction or of the custom of mining or miners shall have arisen in the court below, nor shall any appeal operate to stay proceeding, or be allowed, unless the party appellant shall notify in writing to the registrar, within thirty days after notice of the decree, order, or judgment appealed against his intention to prosecute an appeal, and shall then give or offer to give security by bond to the registrar, to prosecute the same within a time prefixed by the court, and to abide by and perform the final order and award of the Court of Appeal, which bond shall not require to be stamped. And it shall be lawful for the Lord Warden, with the approval of two or more members of the Judicial Committee of the Privy Council, or judges of the High Court of Chancery, or of the Superior Courts of common law, from time to time, to make any general rules and orders for regulating the practice, fees, and costs on appeals pending before him, not inconsistent with the provisions of this act.

No. 2.

"*An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations* (*cited as* '*The Companies Act*, 1862')," 25 & 26 Vict. cap. 89.—[7th August 1862].

SECT. CXXIV.

(*Page* 212, *ante*.)

THE COMPANIES ACT, 1867

(30 & 31 Vict. cap. 131).

An Act to amend "The Companies Act, 1862."—[20*th August* 1867.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

1. *Short title.*—This act may be cited for all purposes as "The Companies Act, 1867."

2. *Act to be construed as one with* 25 *&* 26 *Vict. c.* 89.—The Companies Act, 1862, is hereinafter referred to as "the principal act;" and the principal act and this act are hereinafter distinguished as and may be cited for all purposes as "The Companies Acts, 1862 and 1867;" and this act shall, so far as is consistent with the tenor thereof, be construed as one with the principal act;(*a*) and the expression "this act" in the principal act, and any expression referring to the principal act which occurs in any act or other document shall be construed to mean the principal act as amended by this act.

(*a*) *One with the principal act.*]—By this section the two acts are amalgamated and must be read together.

3. *Commencement of act.*—This act shall come into force on the first day of September one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this act.

UNLIMITED LIABILITY OF DIRECTORS.

4. *Company may have directors with unlimited liability.*—Where after the commencement of this act a Company is formed as a limited Company under the principal act, the liability of the directors or managers of such Company,(*a*) or the managing director, may, if so provided by the Memorandum of Association,(*b*) be unlimited.

(*a*) *The liability of the directors or managers of such Company, &c.*]—This and the four following sections introduce an entirely new principle into the law of limited Companies as existing in this country. The liability of the directors and managers may now be unlimited, while that of the members continues limited as heretofore.

The principle is a most valuable one, and cannot fail to entitle those Companies that adopt it to the confidence of the public. However large may be the capital of a Company, however great its advantages, it is not likely to give profit to shareholders, or safety to creditors unless its affairs are directed with some of that care and prudence, that foresight and vigilant management which a man generally applies to his own business, but which is too often found wanting in the directors of Companies. If directors, however, were so bound up with a Company, that they must rise or fall with it, as a man in trade rises or falls by his own business, the public might pretty safely trust that such directors would find time to do a great deal more than merely pocket their fees.

This principle, now for the first time adopted by our law, has long been recognised by the law of France where associations constituted on this principle are known as *Sociétés en Commandite*. In these associations the responsible members who undertake the management of the business, and whose liability is unlimited, are called "commandites," while the non-responsible members, liable only for the amount of their shares, are termed "commanditaires." The law with reference to these associations will be found in the "Code de Commerce," art. 23, *et seq.*, art. 38, *et seq.*; 4 Pardessus, Dr. Com. n. 1027; Dalloz, Dict. *Société Commerciale*, n. 166.

Such associations also exist in the state of Louisiana, in America, where they are called partnerships *in commendam*. The law with reference to them will be found in the civil code of Louisiana, art. 2810, *et seq.*

(*b*) *If so provided by the Memorandum of Association.*]—Where a Company intends to make the liability of the directors or managers unlimited, its memorandum must contain an express statement to that effect. Companies already constituted are empowered by sect. 8, *infra*, to make the necessary alteration in the Memorandum of Association by special resolution.

5. *Liability of director, past and present, where liability is unlimited.*—The following modifications shall be made in the thirty-eighth section of the principal act,(*a*) with respect to the contributions to be required in the event of the winding-up of a limited Company under the principal act, from any director or manager whose liability is, in pursuance of this act, unlimited:

(1.) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company:

(2.) No contribution required from any past director or

manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company:

(3.) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company:

(4.) Subject to the provisions contained in the regulations of the Company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the court deems it necessary (*b*) to require such contribution in order to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of the winding-up.

(*a*) *The thirty-eighth section of the principal act.*]—See p. 116, *ante.*

(*b*) *Unless the court deems it necessary.*]—The unlimited liability here provided for will, of course, only come into operation in the event of a winding-up, and it may be presumed that, in the absence of any provisions to the contrary contained in the regulations of the Company, the court would not deem it necessary to enforce such unlimited liability, unless in the case of the contributions of the ordinary members proving insufficient.

6. *Director with unlimited liability may have set-off as under—Sect.* 101 *of* 25 *&* 26 *Vict. c.* 89.—In the event of the winding-up of any limited Company, the court, if it think fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal act, (*a*) it may make to a contributory where the Company is not limited.

(*a*) *The one hundred and first section of the principal act.*]—See p. 199, *ante.*

7. *Notice to be given to director on his election that his liability will be unlimited.*—In any limited Company in which, in pursuance of this act, the liability of a director or manager is unlimited, the directors or managers of the Company (if any), and the member who proposes any person for election or appointment to such office, shall add to such

proposal a statement(*a*) that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such Company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager, or proposer make default in adding such statement,(*b*) or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

(*a*) *Shall add to such proposal a statement, &c.*]—The object of this section, no doubt, is to ensure as far as possible that no one shall be saddled with unlimited liability without his full knowledge and consent.

(*b*) *Make default in adding such statement.*]—If this provision means, as it appears to do, that each of the persons mentioned must repeat the statement, the sense or reason of the requirement is not very obvious. If the statement were once distinctly made as a matter of fact, one would think it ought to be sufficient. All useful purposes would be answered if the persons mentioned were to incur the penalties in case the required statement were not, as a matter of fact, once made.

8. *Existing limited Company may, by special resolution, make liability of directors unlimited.*—Any limited Company under the principal act, whether formed before or after the commencement of this act, may, by a special resolution, if authorised so to do by its regulations, as originally framed or as altered by special resolution,(*a*) from time to time modify the conditions contained in its Memorandum of Association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the Memorandum of Association, and a copy thereof shall be embodied in or annexed to every copy of the Memorandum of Association which is issued after the passing of the resolution,(*b*) and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal act,(*c*) and shall be punished accordingly.

(*a*) *Altered by special resolution.*]—See p. 130, *ante.*

(*b*) *Issued after the passing of the resolution.*]—See sect. 19 of the principal act.

(*c*) *Fifty-fourth section of the principal act.*]—See p. 133, *ante.*

REDUCTION OF CAPITAL AND SHARES.

9. *Power to Company to reduce capital.*—Any Company limited by shares(*a*) may, by special resolution, so far modify the conditions contained in its Memorandum of Association if authorised so to do by its regulations as originally framed or as altered by special resolution,(*b*) as to reduce its capital; but no such resolution for reducing the capital of any Company shall come into operation until an order of the court is registered by the Registrar of Joint-Stock Companies, as is hereinafter mentioned.

(*a*) *Any Company limited by shares.*]—A limited Company, registered under the Companies Act of 1856, is within this enactment: (*Re Crimble Spinning Company*, W. N. 1868, p. 96.)

(*b*) *As altered by special resolution.*]—If a Company's regulations do not authorise it to modify the conditions contained in its Memorandum of Association, its regulations must be altered in order to give the court jurisdiction to make the order provided for by this section; if such a course were not taken, the resolution, even if binding on the existing shareholders, would not bind future shareholders: (*Re West India and Pacific Steamship Company*, W. N. 1868, p. 112.)

10. *Company to add "and reduced" to its name for a limited period.*—The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix,(*a*) the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company within the meaning of the principal act.

(*a*) *Until such date as the court may fix.*]—Three months from the date of the final order has been held to be a proper period, at the end of which the addition of the words "and reduced" to the name of a Company, that has petitioned for an order to confirm resolutions passed for the reduction of their capital under this act, may be discontinued: (*Re Sharp Stewart and Company*, Law Rep. 5 Eq. 155.)

11. *Company to apply to the court for an order confirming reduction.*—A Company which has passed a special resolution for reducing its capital, may apply to the court by petition(*a*) for an order confirming the reduction, and on the hearing of the petition the court, if satisfied that with respect to every creditor of the Company who under the provisions of this act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order con-

firming the reduction(*b*) on such terms and subject to such conditions as it deems fit.

(*a*) *By petition, &c.*]—For the practice with regard to petitions to reduce capital, see the General Order of March, 1868, Rules 2 *et seq.*, *post.*

(*b*) *An order confirming the reduction, &c.*]—For a form of such an order, see *Re Sharp, Stewart, and Company*, Law Rep. 5 Eq. 155.
See, also, *Re Park-lane Company*, W. N. 1868, p. 76.

12. *Definition of the court.*—The expression "the court" (*a*) shall in this act mean the court which has jurisdiction to make an order for winding-up the petitioning Company, and the eighty-first and eighty-third sections of the principal act shall be construed as if the term "winding-up" in those sections included proceedings under this act, and the court may in any proceedings under this act make such order as to costs as it deems fit.

(*a*) *The expression "the court."*]—See p. 157, *ante.*

13. *Creditors may object to reduction, and list of objecting creditors to be settled by the court.*—Where a Company proposes to reduce its capital, every creditor of the Company who at the date fixed by the court(*a*) is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof(*b*) against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The court shall settle a list of such creditors,(*c*) and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices(*d*) fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered or to be excluded from the right(*e*) of objecting to the proposed reduction.

(*a*) *At the date fixed by the court.*]—See the General Order of March, 1868, Rule 4, *post.*

(*b*) *Would be admissible in proof, &c.*]—See p. 240, *ante*, as to debts or claims admissible to proof in a winding-up.

(*c*) *The court shall settle a list of such creditors.*]—For the mode of proceeding in settling a list, see *Re Sharp, Stewart, and Company*, Law Rep. 5 Eq. 155.

(*d*) *Publish notices, &c.*]—See the General Order of March, 1868, Rule 10, *post.*

(*e*) *To be excluded from the right, &c.*]—See sect. 17, *infra*, as to creditors who are ignorant of the proceedings.

14. *Court may dispense with consent of creditor on security being given for his debt.*—Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent (*a*) to the proposed reduction, the court may (if it think fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart, and appropriating in such manner as the court may direct, a sum of such amount as is hereinafter mentioned; (that is to say,)

(1.) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not admitted by the Company, (*b*) and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound-up by the court, and the amount fixed by the court on such inquiry and adjudication shall be set apart and appropriated.

(*a*) *Does not consent, &c.*]—See the General Order of March, 1868, Rule 17, *post*.

(*b*) *Is not admitted by the Company.*]—As to the course to be pursued in that case, see the General Order of March, 1868, Rules 12 *et seq.*, *post*.

15. *Order and minute to be registered.*—The Registrar of Joint-Stock Companies upon the production to him of an order of the court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (*a*) (approved by the court), showing with respect to the capital of the Company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.(*b*)

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this act with respect to the reduction of capital have been complied with, and that the capital of the Company is such as is stated in the minute.

(*a*) *A copy of the order and of a minute, &c.*]—For a form of order and minute, see *Re Sharp, Stewart, and Company* (Law Rep. 5 Eq. 155); there the court held that the minute might be embodied in the order, and would so be sufficiently approved by the court.

(*b*) *In such manner as the court may direct.*—In the case last mentioned the court directed advertisements to be inserted in the *London Gazette*, *Times*, and a newspaper of the place where the Company carried on business.

16. *Minute to form part of Memorandum of Association.*—The minute when registered shall be deemed to be substituted for the corresponding part of the Memorandum of Association (*a*) of the Company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the Memorandum of Association; and subject as in this act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

(*a*) *Corresponding part of the Memorandum of Association, &c.*]—That is the part of the memorandum which states the amount of capital divided into shares of a certain fixed amount, see p. 8, *ante*.

17. *Saving of rights of creditors who are ignorant of proceedings.*—If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of the eightieth section of the principal act,(*a*) to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of the capital of the Company, shall be liable to contribute for the

payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound-up on the day prior to such registration, and on the Company being wound-up, the court on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up ; but the provisions of this section shall not affect the rights of the contributories of the Company among themselves.

(*a*) *The eightieth section of the principal act.*]—See p. 155, *ante*.

18. *Copy of registered minute.*—A minute when registered shall be embodied in every copy of the Memorandum of Association issued after its registration; and if any Company makes default in complying with the provisions of this section it shall incur a penalty(*a*) not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

(*a*) *It shall incur a penalty.*]—As to the recovery of penalties, see p. 136, *ante*.

19. *Penalty on concealment of name of creditor.*—If any director, manager, or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

20. *Power to make rules extended to making rules concerning matters in this act.*—The powers of making rules concerning winding-up conferred by the one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal act shall respectively extend to making

rules (*a*) concerning matters in which jurisdiction is by this act given to the court which has the power of making an order to wind-up a Company, and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

(*a*) *Extend to making rules, &c.*]—The General Order and Rules of March, 1868, *post*, have been issued in pursuance of the power here given.

SUBDIVISION OF SHARES.

21. *Shares may be divided into shares of smaller amount.*—Any Company limited by shares may by special resolution so far modify the conditions contained in its Memorandum of Association, if authorised so to do by its regulations as originally framed or as altered by special resolution, (*a*) as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount (*b*) than is fixed by its Memorandum of Association.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

(*a*) *As altered by special resolution.*]—See p. 130, *ante*.

(*b*) *Into shares of smaller amount.*]—As to such subdivision of shares before this act, see *Re New Zealand Banking Corporation, Sewell's case* (Law Rep. 3 Ch. App. 131); and *Re Finance Corporation, Ex parte Feiling, Holmes, and others* (Law Rep. 2 Ch. App. 714).

22. *Special resolution to be embodied in Memorandum of Association.*—The statement of the number and amount of the shares into which the capital of the Company is divided contained in every copy of the Memorandum of Association issued (*a*) after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

(*a*) *Every copy of the Memorandum of Association issued, &c.*]—Sect. 19 of the principal act provides for the forwarding of such a copy to every member of the Company at his request.

ASSOCIATIONS NOT FOR PROFIT.

23. *Special provisions as to associations formed for purposes not of gain.*—Where any association (*a*) is about to be formed under the principal act as a limited Company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by licence, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this act imposed on limited Companies, with the exceptions that none of the provisions of this act that require a limited Company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered.

The licence by the Board of Trade may be granted upon such conditions and subject to such regulations as the board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said board, be inserted in the Memorandum and Articles of Association, or in both or one of such documents.

(*a*) *Where any association, &c.*]—As to the power of associations not for profit to hold lands, see sect. 21 of the principal act, p. 51, *ante*.

CALLS UPON SHARES.

24. *Company may have some shares fully paid and others not.*—Nothing contained in the principal act (*a*) shall be deemed to prevent any Company under that act, if authorised by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely,—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:

(2.) Accepting from any member of the Company who

assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made :

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

(*a*) *Nothing confirmed in the principal act.*]—As to the manner in which the power of making calls should be exercised, and the circumstances under which a court of equity will restrain the enforcement of a call improperly made, see *Preston* v. *Grand Collier Dock Company* (11 Sim. 327), *Mangles* v. *Grand Collier Dock Company* (10 Sim. 519), *Bailey* v. *Birkenhead Railway Company* (12 Beav. 433), *Yetts* v. *Norfolk Railway Company* (3 De G. & S. 293), and *Richmond's case* and *Painter's case* (4 K. & J. 305).

25. *Manner in which shares are to be issued and held.*—Every share in any Company (*a*) shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares.

(*a*) *Every share in any Company.*]—This is a most important provision, and should be carefully borne in mind by all persons entering into qualified contracts for shares, or accepting payment in paid-up shares for goods, labour, &c. It is to be observed that the section embraces the shares in all Companies.

TRANSFER OF SHARES.

26. *Transfer may be registered at request of transferor.*—A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee. (*a*)

(*a*) *Made by the transferee.*]—On the subject of transfers generally, see p. 55, *et seq.* This section is not likely to have much practical effect.

SHARE WARRANTS TO BEARER.

27. *Warrant of limited shares fully paid-up may be issued in name of bearer.* (*a*)—In the case of a Company limited by shares the Company, if authorised so to do by its regulations

as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid-up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons (*b*) or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

(*a*) By this and the nine following sections, Companies are enabled to give their fully paid-up shareholders greater facilities than they have hitherto had for dealing with their shares. The holder of one of the warrants here provided for, may make any one the owner of his share, and confer on him all his rights against the Company by simple delivery of the warrant without any formal transfer. Thus share warrants may pass through as many hands, and with as much facility as bank notes, the holder for the time being having the right to claim any dividends that become payable, and to require his name to be entered on the register of members.

(*b*) *May provide by coupons.*]—A coupon (derived from the French *couper*, to cut) is that part of a commercial instrument which is to be cut, and which is evidence of something connected with the contract mentioned in the instrument. It was held, in the case of *Enthoven* v. *Hoyle* (21 L. J. C. P. 100), that coupons attached to debentures, and which should be presented in order to obtain payment of the interest as it fell due, did not require to be stamped. The form of coupon there used is given in the report of the case.

28. *Effect of share warrant.*—A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

29. *Re-registration of bearer of a share warrant in the register.*—The bearer of a share warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, (*a*) and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

(*a*) *In the register of members.*]—The fact of a Company availing itself of these provisions with respect to issuing share warrants does not supersede the necessity for keeping a register.

30. *Regulations of the Company may make the bearer of a share warrant a member.*—The bearer of a share warrant

may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of the principal act, either to the full extent or for such purposes (*a*) as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

(*a*) *Either to the full extent or for such purposes, &c.*]—It thus rests entirely with the framers of the Company's Articles of Association to determine the extent to which they will allow the bearers of share warrants to have the rights of members.

31. *Entries in register where share warrant issued.*—On the issue of a share warrant in respect of any share or stock the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1.) The fact of the issue of the warrant:

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal act (*a*) to be entered in the register of members of a Company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member. (*b*)

(*a*) *The twenty-fifth section of the principal act.*]—See p. 100, *ante*.

(*b*) *A person ceased to be a member.*]—It is difficult to attach any precise meaning to this part of the section. See, however, sect. 29, *supra*.

32. *Particulars to be contained in annual summary.*—After the issue by the Company of a share warrant the annual summary (*a*) required by the twenty-sixth section of the principal act shall contain the following particulars:—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

(*a*) *The annual summary, &c.*]—For a form of this annual summary, see p. 307, *ante*.

33. *Stamps on share warrants.*—There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

34. *Penalties on persons committing forgery.*—Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this act, or demands or endeavours to obtain or receive any share or interest of or in any Company under the principal act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

35. *Penalties on persons falsely personating owner of shares.*—Whosoever falsely and deceitfully personates any owner of any share or interest of or in any Company, or of any share warrant or coupon issued in pursuance of this act, and thereby obtain or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

36. *Penalties on persons engraving plates, &c.*—Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate,

wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular Company under and in pursuance of this act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

CONTRACTS.

37. *Contracts how made.*—Contracts on behalf of any Company under the principal act may be made as follows;(*a*) (that is to say,)

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the Company in writing under the common seal of the Company,(*b*) and such contract may be in the same manner varied or discharged:

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority(*c*) of the Company, and such contract may in the same manner be varied or discharged:(*d*)

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol(*e*) on behalf of the Company by any person acting under the express or implied authority of the Company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors and all other parties

thereto, their heirs, executors, or administrators, as the case may be.

(*a*) *May be made as follows.*]—Similar provisions to those of this section were contained in the "Joint-Stock Companies Act, 1856" (19 & 20 Vict. c. 47), s. 41; and are contained in "The Companies Clauses Consolidation Act, 1845" (8 & 9 Vict. c. 16), s. 97.

(*b*) *In writing under the common seal of the Company.*]—This clause merely expresses the general law of contracts as applicable to corporations, apart from special enactments. As to this see p. 35, *ante*.

(*c*) *Acting under the express or implied authority, &c.*]—Under this clause a Company will be bound by a writing not under seal, in cases where such a writing would bind an individual, provided only that the writing be signed by a duly authorised agent. See *Prince* v. *Prince*, Law Rep. 1 Eq. 490.

See, however, with regard to the question of agency, *Williams* v. *Chester and Holyhead Railway Company* (15 Jur. 828), especially the observations of Martin, B., with respect to the evidence against Companies in suits at law.

As to whether an agent not appointed under seal can enter into a contract for the sale or purchase of land on behalf of a Company, see *Wilson* v. *West Hartlepool Railway Company* (34 Beav. 187; 5 N. R. 289; 2 De G. J. & S. 475), *Laird* v. *Birkenhead Railway Company* (Johns. 500; 29 L. J. Ch. 218), and *London and Birmingham Railway Company* v. *Winter* (Cr. & Ph. 57).

A Company was held not to be bound (under the Companies Clauses &c., Act) by a contract in writing entered into by its directors, who did not sign it as directors or purport to bind the Company: (*Serrell* v. *Derbyshire, &c. Railway Company*, 9 C. B. 811; 19 L. J. C. P. 371.)

See, also, *Leominister Canal Company* v. *The Shrewsbury and Hereford Railway Company* (3 K. & J. 654; 26 L. J. Ch. 764), *Midland Great Western Railway Company of Ireland* v. *Johnson* (6 Ho. Lords Cas. 798), and *Diggle* v. *London and Blackwall Railway Company* (5 Exch. 442).

(*d*) *In the same manner be varied or discharged.*]—Where additional terms or variations of a written agreement become necessary, the same formalities that are required for the validity of the original contract should be observed: (*Kirk* v. *Bromley Union*, 2 Ph. 640; *Jackson* v. *The North Wales Railway Company*, 6 Rail. Cas. 112; 13 Jur. 69; *Williams* v. *The Chester and Holyhead Railway Company*, 15 Jur. 828.)

(*e*) *May be made by parol, &c.*]—Where the agent of a railway Company agreed by parol for the purchase of sleepers which were received and used by the Company, it was held that the Company were bound under an enactment similar to this (*Pauling* v. *The London and North Western Railway Company*, 8 Exch. 867). A railway Company was also held liable to pay for the use and occupation of land occupied by it for the purposes of its business: (*Lowe* v. *The London and North Western Railway Company*, 18 Q. B. 632; 7 Rail. Cas. 524.)

Where there was an express contract under seal for the execution of certain works for a Company, it was held that the court could not, in the absence of any evidence, assume an implied contract for the execution of other extra works done by the orders and under the superintendence of the officer appointed to see the specified works properly executed: (*Homersham* v. *Wolverhampton Waterworks Company*, 6 Exch. 137; 20 L. J. Ex. 193.)

See, also, as to extra works, *Lamprell* v. *The Billericay Union* (3 Exch. 283); *Ranger* v. *The Great Western Railway Company* (5 Ho. Lords Cas. 72); *Nixon* v. *The Taff Vale Railway Company* (7 Ha. 136); and *Kirk* v. *The Bromley Union* (2 Ph. 640).

On the subject of agency to a Company, see, also, *Burnes* v. *Pennell* (2 Ho. Lords Cas. 497); *Wilson* v. *West Hartlepool Railway Company* (34 Beav. 187); *Olding* v. *Smith* (16 Jur. 497).

In the recent case of *Walker* v. *The Great Western Railway Company* (Law Rep. 2 Ex. 228), it was held that the general manager of a railway Company had an implied authority, as incidental to his employment, to bind the Company to pay for surgical attendance bestowed at his request on a servant of the Company injured by an accident on their railway.

38. *Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.*—Every prospectus(*a*) of a Company, and every notice inviting persons to subscribe for shares in any joint-stock Company, shall specify the dates and the names of the parties to any contract entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the Company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he shall have had notice of such contract.

(*a*) *Every prospectus, &c.*]—It is to be observed that this section is expressed in the most sweeping terms, and embraces all Companies.

MEETINGS.

39. *Company to hold meeting within four months after registration.*—Every Company formed under the principal act after the commencement of this act shall hold a general meeting within four months(*a*) after its Memorandum of Association is registered; and if such meeting is not held the Company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the Company, and every subscriber of the Memorandum of Association, who knowingly authorises or permits such default, shall be liable to the same penalty.

(*a*) *A general meeting within four months, &c.*]—The Act of 1862, s. 52 (p. 132, *ante*), prescribes the manner of summoning and holding a general meeting where the Company has no regulations on the subject, and, by sect. 49 (p. 129, *ante*), enacts that every Company under the act shall hold a general meeting at least once in every year. A Com-

pany may be wound-up if it does not commence its business within a year of incorporation, *i. e.*, within a year from the date of the registrar's certificate, under sect. 18 of the Act of 1862. See p. 152, *ante*.

WINDING-UP.

40. *Contributory when not qualified to present winding-up petition.*—No contributory (*a*) of a Company under the principal act shall be capable of presenting a petition for winding-up such Company unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

(*a*) *No contributory, &c.*]—For the meaning of the term contributory, see sect. 74 of the Act of 1862 (p. 147, *ante*); the right of a contributory, under sect. 82 of that act, to present a petition for winding-up was quite unqualified previously to the present enactment, and was frequently made use of to the prejudice of the *bonâ fide* shareholders.

41. *Winding-up may be referred to County Court.*—Where the High Court of Chancery in England makes an order for winding-up a Company under the principal act, it may, if it thinks fit, direct all subsequent proceedings (*a*) to be had in a County Court held under an act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter ninety-five, and the acts amending the same; and thereupon such County Court shall, for the purpose of winding-up the Company, be deemed to be "the court" within the meaning of the principal act, (*b*) and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court of Chancery.

(*a*) *Direct all subsequent proceedings.*]—Where, on a petition to wind-up a Company, the court was asked to refer the winding-up to the County Court under this section, the court made the winding-up order, leaving the petitioners to apply at chambers for a reference of the

winding-up to the County Court: (*London and Westminster Co-operative Store Company*, W. N. 1868, p. 28; 17 L. T. N. S. 559.)

(*b*) *Within the meaning of the principal act.*]—See p. 157, *ante*.

42. *As to transfer of suit from one County Court to another.*—If during the progress of a winding-up it is made to appear to the High Court of Chancery that the same could be more conveniently prosecuted in any other County Court, it shall be competent for the High Court of Chancery to transfer the same to such other County Court, and thereupon the winding-up shall proceed in such other County Court.

43. *Parties aggrieved may appeal.*—If any party in a winding-up under this act is dissatisfied with the determination or direction of a judge of a County Court on any matter in such winding-up, such party may appeal from the same to the Vice-Chancellor named for that purpose by the Lord Chancellor by general order: provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the County Court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

44. *Powers to frame rules and orders under sect.* 32 *of* 19 *&* 20 *Vict. c.* 108.—The County Court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the thirty-second section of an act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice(*a*) of the County Courts under this act, and forms of proceedings therein, and from time to time may amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall from a day to be named by the Lord Chancellor be in force in every County Court.

(*a*) *For regulating the practice.*]—See County Court Orders, *post.*

45. *Scale of costs to be framed by the judges.*—The County Court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under this act, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every County Court.

46. *Remuneration of registrars and high bailiffs in winding-up of Companies.*—The registrars and high bailiffs of the County Courts shall be remunerated for the duties to be performed by them under this act, by receiving, for their own use, such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders; provided that it shall be lawful for the said commissioners, with the like consent as aforesaid, by an order to direct that after the date named in the order any registrar or high bailiff shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just, and after such date the said fees shall be accounted for and paid over by such registrar or high bailiff in such manner as may be directed in the order.

SAVING.

47. *Not to exempt Companies from provisions of sect.* 196 *of* 25 *&* 26 *Vict. c.* 89.—Nothing in this act contained shall exempt any Company from the second or third provisions(*a*) of the one hundred and ninety-sixth section of the principal act restraining the alteration of any provision in any act of Parliament or charter.

(*a*) *Second or third provisions, &c.*]—See p. 269, *ante.*

GENERAL ORDER AND RULES

OF THE

HIGH COURT OF CHANCERY,

TO

REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1867.

ISSUED BY THE LORD HIGH CHANCELLOR,

SATURDAY, THE 21ST DAY OF MARCH, 1868.

ORDER OF COURT.

Saturday, the 21st day of March, 1868.

THE Right Honorable HUGH MACCALMONT BARON CAIRNS, Lord High Chancellor of Great Britain, with the advice and consent of the Right Honorable JOHN LORD ROMILLY, Master of the Rolls; the Honorable the VICE-CHANCELLOR SIR JOHN STUART, and the Honorable the VICE-CHANCELLOR SIR RICHARD MALINS, doth hereby, in pursuance and execution of the powers given to him by "The Companies Act, 1867," and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

Petitions for winding-up.

1. Every petition(*a*) which shall after this order comes into operation be presented for the winding-up of any Company by the court, or subject to the supervision of the court, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies Acts, 1862 and 1867," and of the Company to which such petition shall relate.

(*a*) See p. 317, *ante*.

Petition to reduce Capital.

2. Every petition for an order confirming a special resolution for reducing the capital of a Company, and all notices, affidavits, and other proceedings under such petition, shall

be intituled in the matter of "The Companies Act, 1867," and of the Company in question.

3. No such petition as mentioned in the 2nd rule of this order shall be placed in the list of petitions by the secretary of the Lord Chancellor or the Master of the Rolls, as the case may be, until after the expiration of eight clear days from the filing of such certificate as is mentioned in the 14th rule of this order.

4. When any such petition as last aforesaid has been presented, application may be made, *ex parte* by summons in chambers, to the judge to whose court the petition is attached, for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 13th section of "The Companies Act, 1867;" and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 5th and 6th rules of this order. The order upon such summons may be in the Form No. 1 in the schedule hereto, with such variations as the circumstances of the case may require.

5. Notice of the presentation of the petition shall be published at such times, and in such newspapers as the judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed as mentioned in the 4th rule of this order. Such notice may be in the Form No. 2 in the schedule hereto, with such variations as the circumstances of the case may require.

6. The Company shall, within such time as the judge shall direct, file in the Office of the Clerks of Records and Writs, an affidavit made by some officer or officers of the Company competent to make the same, verifying a list(*a*) containing the names and addresses of the creditors of the Company at the date fixed as mentioned in the 4th rule of this order, and the amounts due to them respectively, and leave the said list and an office copy of such affidavit, at the chambers of the judge.

(*a*) As to the penalties on concealment of the name of any creditor, see sect. 19 of the act.

7. The person making such affidavit shall state therein

his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim, which, if that date were the commencement of the winding-up of the Company, would be admissible in proof(*a*) against the Company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the Form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

(*a*) See page 240, *ante*, as to debts or claims admissible to proof in a winding-up.

8. Copies of such list shall be kept at the registered office of the Company, and at the offices of their solicitors and London agents (if any), and any person desirous of inspecting the same may at any time, during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one shilling.

9. The Company shall, within seven days after the filing of such affidavit, or such further time as the judge may allow, send to each creditor whose name is entered in the said list, a notice(*a*) stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the Company; and such notice shall be sent through the post in a pre-paid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4, set forth in the schedule hereto, with such variations as the circumstances of the case may require.

(*a*) Where a Company had issued debentures payable to bearer, and the existing holders of such debentures were unknown, the court allowed the required notice to be given by advertisement in the public newspapers: (*Re General Bank for the Promotion of Agriculture, &c.*, W. N. 1869, p. 13.)

See, also, *Re West Indian and Pacific Steam Packet Company*, 19 L. T. N. S. 310.

10. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 6th of these rules, be published at such times, and in such newspapers, as the judge shall direct. Every such notice shall state the amount of

the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the Company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the Company; and such notice may be in the Form No. 5, set forth in the said schedule hereto, with such variations as the circumstances of the case may require.

11. The Company shall, within such time as the judge shall direct, file in the Office of the Clerks of Records and Writs an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in the 9th and 10th rules of this order, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the Company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the Company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the Company. Such affidavit may be in the Form No. 6 in the schedule hereto, with such variations as the circumstances of the case may require; and such list, and an office copy of such affidavit, shall, within such time as the judge shall direct, be left at the chambers of the judge.

12. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the Company at its full amount, then, and in every such case, unless the Company are willing to set apart and appropriate(*a*) in such manner as the judge shall direct the full amount of such debt or claim, the Company shall, if the judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the Company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the

manner mentioned in the 9th rule of this order, and may be in the Form No. 7, in the schedule hereto, with such variations as the circumstances of the case may require.

(*a*) As to this, see sect. 14 of the act.

13. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in the 12th of these rules, shall be allowed their costs of proof against the Company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a decree in a cause.

14. The result of the settlement of the list of creditors shall be stated in a certificate by the chief clerk, and such certificate shall state what debts or claims if any have been disallowed, and shall distinguish the debts or claims the full amount of which the Company are willing to set apart and appropriate, and the debts or claims if any the amount of which has been fixed by inquiry and adjudication in manner provided by section 14 of the said act, and the debts or claims if any the full amount of which is not admitted by the Company, nor such as the Company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as last aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and of what debts or claims the payment has been secured in manner provided by the said 14th section.

15. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition may be placed in the list of petitions upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, stating that the certificate has been filed and become binding.

16. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. Such notices may be in the Form No. 8, in the schedule hereto, with such variations as the circumstances of the case may require.

17. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by the 14th section of the said act, and who has not, before

the hearing, signed a consent to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the Company of his intention so to do, appear at the hearing of the petition and oppose the application.

18. Where a creditor who appears at the hearing under the last preceding rule, is a creditor the full amount of whose debt or claim is not admitted by the Company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 14 of the said act, the costs of and occasioned by his appearance shall be dealt with as to the court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance, unless the court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

19. When the petition comes on to be heard, the court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 14 of the said act the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

20. Where the court makes an order confirming a reduction, such order shall give directions(*a*) in what manner, and in what newspapers, and at what times, notice of the registration of the order and of such minute as mentioned in the 15th section of "The Companies Act, 1867," is to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the Company as mentioned in the 10th section of the same act.

(*a*) See *Re Sharp Stewart and Company*, Law Rep. 5 Eq. 155.

Fees.

21. Solicitors shall be entitled to charge and be allowed for duties performed under "The Companies Act, 1867," the same fees(*a*) as they shall for the time being be entitled to charge and be allowed for the like duties performed under "The Companies Act, 1862," unless the court or judge shall otherwise specially direct.

(*a*) See p. 339, *ante*.

22. The same fees of court(*a*) shall be paid in relation to proceedings in Chancery under "The Companies Act, 1867," as shall for the time being be payable in relation to like proceedings in Chancery under "The Companies Act, 1862," and shall be collected by stamps in manner provided by the general orders of the court.

(*a*) See p. 340, *ante*.

General Directions.

23. The general orders and practice of the court, including the course of proceeding and practice in the judges' chambers, shall, in cases not provided for by "The Companies Act, 1867," or these rules, so far as such orders and practice are applicable and not inconsistent with the said act or with these rules, apply to all proceedings in the Court of Chancery under the said act.

24. The power of the court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same in proceedings under "The Companies Act, 1867," as in proceedings under the ordinary jurisdiction of the court.

Commencement of Order.

25. This order shall take effect and come into operation on the 15th day of April, 1868, and shall apply to all proceedings in Chancery under the said act, whether commenced before or after that day, but every proceeding taken under the said act before that day shall have the same validity as it would have had if this order had not been made.

Interpretation.

26. The general interpretation clause of the consolidated general orders shall be deemed to extend and apply to the rules of this order, and this order shall be deemed a general order of this court.

CAIRNS, C.
ROMILLY, M.R.
JOHN STUART, V.C.
RICHARD MALINS, V.C.

THE SCHEDULE.

No. 1. *Form of Order.* [Rule 4.]

The Master of the Rolls [*or*, Vice-Chancellor Sir at chambers.] In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Upon the application of the petitioners by summons, dated , and upon hearing the solicitor for the petitioners, and on reading the petition on the day of , preferred unto the Right Honorable the Lord High Chancellor of Great Britain [*or*, Master of the Rolls], it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said Company on the day of , 186 , and that notice of the presentation of the said petition be inserted in [the newspapers] on the day of and [other times of insertion], and that a list of the persons who are creditors of the Company on the said day of , and an office copy of the affidavit verifying the same be left at the chambers of the judge on or before the day of .

No. 2. [See Rule 5.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition for confirming a resolution reducing the capital of the above Company from £ to £ , was on the day presented to [the Lord Chancellor, *or*, the Master of the Rolls], and is now pending; and that the list of creditors of the Company is to be made out as for the day of , 186 .

C. and D. of [agents for A. and B., of], Solicitors to the Company.

No. 3. *Affidavit verifying List of Creditors.* [Rule 7.]

In Chancery.

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

I, A. B., of &c., make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the creditors of and persons having claims upon the said Company on the day of , 186 (the date fixed by the order in this matter, dated), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date

aforesaid, any debt or claim which, if such date were the commencement of the winding-up of the said Company, would be admissible in proof against the said Company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said Company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said Company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the matter, &c.

This list of creditors marked A. was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of , 186 .

X. Y., &c.

Names, Addresses, and Description of the Creditors.	Nature of Debt or Claim.	Amount of Debt or Claim.

No. 4. [See Rule 9.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are requested to take notice that a petition has been presented to the Court of Chancery to confirm a special resolution of the above Company, for reducing its capital to £ , and that in the list of persons admitted by the Company, to have been on the day of , creditors of the Company, your name is entered as a creditor [here state the amount of the debt or nature of the claim].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before the day of , send in the particulars of your claim, and the name and address of your solicitor (if any), to the undersigned at . In default of your so doing, the above entry in the list of creditors will in all the proceedings under the above application to reduce the capital of the Company be treated as correct.

Dated this day of 18 .

A. B.,
Solicitor for the said Company.

No. 5. [See Rule 10.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition has been presented to the Court of Chancery for confirming a resolution of the above Company, for reducing its capital from £ to £ . A list of the persons admitted to have been creditors of the Company on the day of , 186 , may be inspected at the offices of the Company at , or at the office of , at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the Company, and who is not entered on the said list and claims to be so entered, must on or before the day of , send in his name and address and the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of , 18 .

A. B.,
Solicitor for the said Company.

No. 6. [Rule 11.]

In Chancery.

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

We, C. D., of &c. [the secretary of the said Company], E. F., of &c. [the solicitor of the said Company], and A. B., of &c. [the managing director of the said Company], severally make oath and say as follows:—

I, the said C. D., for myself, say as follows:—

[Rule 9.] 1. I did, on the day of , 186 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors marked A., referred to in the affidavit of , filed on the day of , 186 .

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively, and with the proper postage stamps affixed thereto as prepaid letters, into the post office, receiving house, No. , in street, in the county of , between the hours of , and of the clock in the noon of the said day of .

And I, the said E. F., for myself, say as follows:

If Notice issued under Rule 10. 3. A true copy of the notice now produced and shown to me, and marked C., has appeared in the of the day of , 186 , the of the day of 186 , &c.

[Rule 11.] 4. I have, in the paper writing now produced and shown to me, and marked D., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice B. now

produced and shown to me by persons claiming to be creditors of the said Company for larger amounts than are stated in the list of creditors marked A., referred to in the affidavit of , filed on the day of 186 .

5. I have, in the paper writing now produced and shown to me, marked E., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said Company on the day of , 186 , not appearing on the said list of creditors, marked A., and who claimed to be entered thereon. If Notice issued under Rule 10.

And we, C. D. and A. B., for ourselves, say as follows :—

6. We have in the first part of the said paper writing, [Rule 11.] marked D (now produced and shown to us), and also in the first part of the said paper writing, marked E. (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said Company to be due wholly or in part, and how much is admitted to be due, in respect of such of the same debts and claims respectively as are not wholly admitted.

7. We have, in the second part of each of the said paper [Rule 11.] writings, marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said Company:

8. In the said exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the judge shall direct.

Sworn, &c.

Exhibit D. referred to in the last-mentioned Affidavit.

D.

In the matter, &c.,

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said Company for *larger amounts* than are stated in list of creditors made out by the Company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this day of , 186 .

X. Y., &c.

FIRST PART.

Debts and Claims wholly or partly admitted by the Company.

Names, Addresses, and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount claimed.	Amount admitted by the Company to be owing to Creditor.	Debts proposed to be set apart and appropriated in full although disputed.

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E., referred to in the last Affidavit.

E.

In the matter, &c.,

List of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the Company, and to be entered on the list of the creditors made out by the Company.

This paper writing, marked E., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit, sworn before me, this day of 186 .

X. Y., &c.,

FIRST PART.

[Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

NOTE.—The names are to be inserted alphabetically.

No. 7. [See Rule 12.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above Company, by filing your affidavit and giving notice thereof to Mr. , the solicitor of the Company, on or before the day of next; and you are to attend by your solicitor at the chambers of [the Master of the Rolls, in the Rolls Yard, Chancery Lane, *or* the Vice-Chancellor at No. , Lincoln's Inn], in the county of Middlesex, on the day of , 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the capital of the Company], *or* [in all proceedings relative to the proposed reduction of the capital of the Company, be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this day of , 18 .

A. B.,
Solicitor for the said Company.

No. 8. [See Rule 16.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition presented to the [Lord Chancellor] *or* [the Master of the Rolls], on the day of , for confirming a resolution reducing the capital of the above Company from £ to £ , is directed to be heard before [the Vice-Chancellor] *or* [the Master of the Rolls], on the day of , 186 .

C. and D., of [Agents for E. and F., of],
Solicitors for the Company.

CAIRNS, C.
ROMILLY, M.R.
JOHN STUART, V.C.
RICHARD MALINS, V.C.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862

(25 & 26 Vict. cap. 87).

An Act to consolidate and amend the Laws relating to Industrial and Provident Societies.—[*7th August* 1862.]

[Note.—The associations regulated by this and the following statute, being a species of joint-stock Company, naturally fall within the same branch of law. In many respects an industrial and provident society is similar to a Company limited by shares formed under "The Companies Act, 1862," and when it comes to be wound-up all the winding-up provisions of that act become applicable to it. These associations differ from Companies under the Companies Acts in the following particulars: No member can hold or claim an interest exceeding 200*l.*; their rules and other instruments are exempt from stamp duty; the members enjoy certain exemptions from income-tax; facilities are afforded for the settlement of disputes; and, lastly, the Registrar of Friendly Societies exercises a supervision over them, and obliges them each year to make a detailed return as to their course of business, &c. The jurisdiction exercised by the registrar is probably one of the most valuable features in these associations, and is a safeguard, to a considerable degree, against evils that sometimes crop up in the ordinary joint-stock Company. These acts have been largely taken advantage of by co-operative societies formed of working men and others, and there is little doubt that their general effect has been most beneficial.]

15 *&* 16 *Vict. c.* 31—17 *&* 18 *Vict. c.* 25—19 *&* 20 *Vict. c.* 40.—Whereas by "The Industrial and Provident Societies Act, 1852," it is enacted, that it shall be lawful for any number of persons to establish a society under the provisions thereof and of the therein-recited act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorised by the laws in force with respect to friendly societies or by the said recited act, by carrying on or exercising in common any labour, trade, or handicraft, or several labours, trades, or handicrafts, except the working of mines, minerals, or quarries beyond the limits of the united kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said united kingdom or elsewhere; and that the said act shall apply to all societies already established for any of the purposes herein mentioned,

so soon as they shall conform to the provisions hereof: And whereas by an act passed in the seventeenth and eighteenth years of Her present Majesty, chapter twenty-five, various provisions were made for the better enabling legal proceedings to be carried on in any matter concerning the societies formed under the said act of 1852: and whereas the last-mentioned act was amended by an act passed in the first session of the nineteenth and twentieth years of Her present Majesty, chapter forty: and whereas various societies have been formed and are now carrying on business under the provisions of the said recited acts, and it is desirable to consolidate and amend the laws relating to such societies: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Recited acts repealed.*—"The Industrial and Provident Societies Act, 1852," and the said recited acts for the amendment thereof, are hereby repealed(*a*) from the passing of this act.

(*a*) *Are hereby repealed.*]—The acts repealed are 15 & 16 Vict. c. 31; 17 & 18 Vict. c. 25; and 19 & 20 Vict. c. 40.

2. *As to societies registered under recited acts.*—All societies registered under "The Industrial and Provident Societies Act, 1852," shall be entitled to obtain a certificate of registration on application to the Registrar of Friendly Societies, and for which certificate no fee shall be payable to the registrar.

3. *Constitution of societies under this act.*—Any number of persons, not being less than seven, may establish a society under this act for the purpose of carrying on any labour, trade, or handicraft, whether wholesale or retail, [except the working of mines and quarries, and](*a*) except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts, or otherwise permitted by law.(*b*)

(*a*) The part of the section within brackets has been repealed by the act of 1867, s. 1, *post*. The exception, therefore, of the working of mines and quarries no longer exists.

(*b*) *Otherwise permitted by law.*]—A society established *bonâ fide* partly for benevolent purposes, but also substantially for a purpose not analogous to those of friendly societies (viz. the promotion of strikes and other trades-union objects), and including among its rules some in

restraint of trade, is not a friendly society within 18 & 19 Viet. c. 63, ss. 9, 24, 44, inasmuch as it cannot be said to be established for a "purpose which is not illegal." The court in this case used the word "illegal" as meaning not enforcible at law, and did not say whether societies, the rules of which were intended to operate in restraint of trade, were criminally illegal or not: (*Hornby* v. *Close*, 15 W. R. Q. B. 336; Law Rep. 2 Q. B. 153; 15 L. T. 563; 36 L. J. M. C. 43.) The element of conspiracy, where it existed, would seem, however, to render a society even criminally illegal.

See the judgment of Turner, L. J. (*Re Midland Counties Benefit Building Society*, 33 L. J. Ch. 739), as to this act applying only to societies, the object of which is combination for labour or trade.

4. *Rules.*—The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this act.(*a*)

(*a*) *The schedule annexed to this act.*]—The schedule annexed to the "Industrial and Provident Societies Act, 1867," *post*, has now been substituted for it.

5. *Registration of society.*(*a*)—Two copies of the rules shall be forwarded to the Registrar of Friendly Societies of England, Scotland, or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by "The Friendly Societies Act, 1855," and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability.

(*a*) This section has been repealed by the act of 1867, sect. 1, *post*. It is re-enacted, however, by sect. 4 of that act (which see), with the addition that a society when incorporated shall have "power to purchase, erect, and sell, and convey" lands and buildings.

6. *Certificate of registration to vest all property in society now held in trust for society.*—The certificate of registration shall vest in the society all the property(*a*) that may at the time be vested in any person in trust for the society; and all legal proceedings then pending(*b*) by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement.

(*a*) *All the property, &c.*]—The word "property" used here has been held to include a *chose in action*; and where a bond had been given to trustees for an industrial society registered under 15 & 16 Viet. c. 31

("The Industrial and Provident Societies Act, 1852"), it was held that the certificate of registration under this act vested it in the society, and that the society could sue on it, in its corporate name, for breaches of the condition subsequent to the registration: (*Queensbury Industrial Society* v. *Pickles*, Law Rep. 1 Ex. 1; 3 H. & C. 857; 35 L. J. Ex. 1; 13 L. T. N. S. 295.)

(*b*) *All legal proceedings then pending, &c.*]—An industrial and provident society registered under this act is not liable to be sued in its corporate capacity in an action commenced after its registration, for a debt incurred previously thereto: (*Linton* v. *Blakeney Joint Co-operative Industrial Society*, 3 H. & C. 853; 34 L. J. Ex. 211. See *Dean* v. *Mellard*, 32 L. J. C. P. 282.)

7. *Copy of rules to be delivered to persons on demand.*—A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding one shilling.

8. *No society to be registered by same name as that of any existing society.*—No society shall be registered under a name identical(*a*) with that by which any other existing society has been registered, or so nearly resembling such name as to be likely to deceive the members or the public, and the word "limited" shall be the last word in the name of every society registered under this act.

(*a*) *Under a name identical, &c.*]—See p. 50, *ante*.

9. *Members' interests limited to* 200*l.*(*a*)

(*a*) This section has been repealed by the act of 1867, s. 1, *post*. Sect. 2 of that act, however, re-enacts it.

10. *Publication of name by a society.*—Every society registered under this act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such society, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the society.

11. *Penalties on non-publication of name, &c.*—If any society under this act(*a*) does not paint or affix, and keep painted or affixed, its name in manner directed by this act,

it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such society or any person on its behalf uses any seal purporting to be a seal of the society whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such society, or signs or authorises to be signed on behalf of such society any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the society wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the society.

(*a*) *If any society under this act, &c.*]—This section is identical in its provisions with sect. 42 of "The Companies Act, 1862," p. 122, *ante*.

12. *Every society to have a registered office—Penalty on default.*—Every society under this act(*a*) shall have a registered office to which all communications and notices may be addressed: If any society registered under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

(*a*) *Every society under this act, &c.*]—See p. 120, *ante*.

13. *Notice of situation of registered office.*—Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: Until such notice is given the society shall not be deemed to have complied with the provisions of this act.

14. *Signature, and effect of rules.*—The rules of every society(*a*) registered under this act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to such rules subject to the provisions of this act; and all moneys payable by any member to the society in pursuance of such rules shall be deemed to be a debt due from such member to the society.

(*a*) *The rules of every society, &c.*]—Sect. 16 of "The Companies Act, 1862" (p. 30, *ante*) corresponds to this.

15. *Application of Friendly Societies Acts to this act.*(*a*)—The provisions of the Friendly Societies Acts shall apply to societies registered under this act in the following particulars:

Exemption from stamp duties and income tax:
Settlements of disputes by arbitration or justices:
Compensation to members unjustly excluded:
Power of justices or County Courts in case of fraud:
Jurisdiction of the registrar.

(*a*) This section has been repealed by the act of 1867, sect. 1, *post.* Its provisions, however, are substantially re-enacted by sects. 3, 12, and 13 of that act.

16. *Power to member to nominate persons into whose name his interest may be transferred at his death.*(*a*)—The provisions of "The Friendly Societies Act, 1854," whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be transferred: Provided, nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any persons so nominated the full value of such interest.

(*a*) This section has been repealed by "The Industrial and Provident Societies Act, 1867," s. 1, *post.* Sect. 5, however, of that act contains provisions substituted for those contained in it.

17. *As to the winding-up of societies.*—Any society registered under this act(*a*) may be wound-up either by the court(*b*) or voluntarily(*c*) in the same manner and under the same circumstances under and in which any Company may be wound-up under any acts or act for the time being in force for winding-up Companies; and all the provisions of such acts or act(*d*) with respect to winding-up shall apply to such society, with this exception, that the court having jurisdiction in the winding-up shall be the County Court(*e*) of the district in which the office of the society is situated.(*f*)

(*a*) *Any society registered under this act, &c.*]—A society cannot be wound-up under this act unless it is registered under it, but it appears that a society which may and ought to register under it cannot be wound-up without doing so.

An industrial society was duly registered under "The Industrial and Provident Societies Act, 1852"; which act has been repealed by sect. 1, *supra*. In November, 1862, before the society had been re-registered, an order for winding-up the society was made by the Court of Chancery under "The Companies Act, 1862." In June, 1864, the society was registered under this act.

On a motion to discharge the order for winding-up, it was held that the Court of Chancery had no jurisdiction to make the order, and that it must be set aside accordingly: (*Re Chatham Co-operative Industrial Society*, 33 L. J. Ch. 737, on appeal; 10 Jur. N. S. 983; 10 L. T. N. S. 842.)

See, also, *Re Rotherhithe Co-operative and Industrial Society*, 32 Beav. 57; 7 L. T. N. S. 305.

It has been held, however, that benefit building societies are quite distinct from friendly, and also from industrial or provident societies, and that this act does not include them. They may be wound-up by the Court of Chancery under "The Companies Act, 1862:" (*Re Midland Counties Benefit Building Society*, 33 L. J. Ch. 520, 739.)

In considering this section, sect. 199 of "The Companies Act, 1862," p. 271, *ante*, should not be lost sight of.

(*b*) *By the court.*]—See p. 152, *ante*.

(*c*) *Voluntarily.*]—See p. 217, *ante*.

(*d*) *All the provisions of such acts or act, &c.*]—See Part IV. of "The Companies Act, 1862," beginning p. 147, *ante*.

No appeal lies to a common-law court from the County Court, in respect of an order made in exercise of its powers in a winding-up proceeding under this section: (*Henderson* v. *Bamber*, 19 C. B. N. S. 540; 35 L. J. C. P. 65.

See this case, also, as to whether the County Court, under the authority conferred upon it by this statute, has power to make an order restraining proceedings in the Liverpool Passage Court against a member of an industrial society registered under this act, which is being wound-up in the County Court by virtue of the jurisdiction conferred upon it by this section.

See, also, *Gray* v. *Raper* (Law Rep. 1 C. P. 694), p. 277, *ante*.

(*e*) *Shall be the County Court, &c.*]—The Court of Chancery has no jurisdiction to wind-up under "The Companies Act, 1862," any association that comes within the scope of this act. See the cases in note (*a*), *supra*.

(*f*) *In which the office of the society is situated.*]—See p. 120, *ante*.

18. *Dissolution of society not to prevent winding-up of its affairs.*—In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this act, so long and so far as any matters relating to the same remain unsettled, (*a*) to the intent that such society may do all things necessary to the winding-up of the concerns thereof, and that it may be sued and sue, under the provisions of this act, in respect of all matters relating to such society.

(*a*) *Matters relating to the same remain unsettled.*]—The rules of a pri-

vate society in the nature of a friendly society, the funds of which were furnished partly by the members, and partly by non-members, provided that the interest of the funds should alone be applied towards its purposes. No provision was made for the ultimate distribution of the capital. A sole surviving member of the society filed a bill for payment to her of the capital of the fund. It was ordered that the income of the fund should be paid to her during her life, with liberty to apply at her death, and notice of the application to be given to the Attorney-General: (*Spiller* v. *Maude*, 11 L. T. N. S. 329.)

19. *Provisions of Joint-Stock Companies Acts to apply.*—The provisions of the Joint-Stock Companies Acts as to bills of exchange(*a*) and the admissibility of the register of shares(*b*) in evidence shall apply to all societies registered under this act.

(*a*) *As to bills of exchange.*]—See "The Companies Act, 1862," s. 47, p. 125, *ante*.

(*b*) *The admissibility of the register of shares, &c.*]—"The Companies Act, 1862," s. 37 (p. 116, *ante*), makes the register of members evidence. Such register should contain a statement of the shares held by each member (see sect. 25 of the act), but it is not termed in the act a register of shares.

20. *Liability of present and past members of society.*—In the event of a society registered under this act(*a*) being wound-up, every present and past member of such society shall be liable to contribute to the assets of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

(1.) No past member shall be liable to contribute to the assets of the society if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(2.) No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceased to be a member:

(3.) No past member shall be liable to contribute to the assets of the society unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in order to satisfy all just demands upon such society:

(4.) No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares

in respect of which he is liable as a past or present member.

(*a*) *A society registered under this act.*]—See "The Companies Act, 1862," s. 38, p. 116, *ante.*

21. *Society may be constituted under Companies Acts.*—Any society registered under this act may be constituted a Company under the Companies Acts, by conforming to the provisions set forth in such act,(*a*) and thereupon shall cease to retain its registration under this act.

(*a*) *The provisions set forth in such act.*]—See p. 3, *ante.*

22. *Members may inspect books.*—Every person or member having an interest in the funds of any society registered under this act may inspect the books and the names of the members at all reasonable hours at the office of the society.

23. *Sheriff's jurisdiction in Scotland.*—The sheriff in Scotland shall within his county have the like jurisdiction(*a*) as is hereby given to the judge of the County Court in any matter arising under this act.

(*a*) *The like jurisdiction, &c.*]—See *Brodie* v. *Johnson*, 30 Beav. 129.

24. *Annual returns to be prepared as registrar may direct.*—A general statement of the funds and effects of any society registered under this act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period,(*a*) and in such form, and shall comprise such particulars(*b*) as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same.

(*a*) *Within such period.*]—See sect. 9 of the act of 1867, *post*, as to the time within which the returns under this section must be made.

(*b*) *In such form, and shall comprise such particulars, &c.*]—In the beginning of every year the registrar sends to each registered society a form in duplicate containing a series of questions as to the particulars he requires; these questions have to be answered and one copy returned to the registrar on or before the 1st of March, the other retained by the society. The following is the form that was sent in the present year:—

GENERAL STATEMENT of the Funds and Effects of the Society (Limited), held at , in the county of , from January 1, to December 31, 1868.

Reg. No.

1. In what year was your society established?	
2. In what year did it first obtain a certificate of registration?	
3. State in full the address of your registered office or place of business.	
4. What trade or trades are carried on by your society?	
5. Do you take credit on purchase of goods? If so, what length of time do you in general take?	
6. Do you require ready money for goods sold to members? If not, what length of time do you in general allow for payment?	
7. If you give credit to members, what percentage does it in general bear to their unpaid shares? And does it in general exceed them?	
8. Do you give credit on sale of goods to non-members? If so, what amount and what length of time do you allow for payment?	
9. Is your society insured? If so, to what amount on buildings, and what amount on stock-in-trade, and in what office or offices? stating the amount insured in each.	
10. How often, and when, do you take stock, balance your accounts, and declare your dividends?	
11. Are your accounts audited by members or non-members? And are they public accountants?	
12. What was the exact number of members in your society at the end of the year 1868?	
13. What number of members were admitted into your society during the year 1868?	
14. What number of members withdrew from your society during the year 1868?	

Reg. No.

15. State the amount of each share.	
16. What is the amount of your share capital at the end of the year 1868, including interest due thereon ?*	
17. What amount (including cash invested, interest on share capital, and dividend declared due to members) has been credited or added to your share account during the year 1868 ?*	
18. What amount (including cash, interest, and dividend, also forfeits, if deducted from share capital) has been debited to or withdrawn from your share account during the year 1868 ?*	
19. What is the amount of your loan capital at the end of the year 1868, including interest due thereon ?*	
20. What amount (including interest due thereon) has been credited to, or added to your loan capital during the year 1868 ?*	
21. What amount (including cash and interest), has been debited to or withdrawn from your loan capital during the year 1868 ?*	
22. What is the amount of cash paid for goods during the year 1867 ?(a) You must include raw material, inward carriage, cartage, wages paid for goods made or manufactured by your society, together with the amount owing for those items at the end of the year 1867, and deduct therefrom the amount owing for those items at the end of the year 1868.*	
23. What is the amount of cash received for goods sold during the year 1868 ? If your society allows credit on the sale of goods, include the amount owing for goods, at the end of 1868, and deduct from their sum total the amount owing for goods at the end of 1867.*	
24. State the total amount owing by your society on December 31, 1868, for goods or expenses.*	

(a) Sic.

Reg. No.

25. What was the average amount of your stock-in-trade during the year 1868?	
26. State the total amount of your expenses for the year 1868, whether paid or owing. You must include all wages and salaries (but not wages paid for making and manufacturing goods), also gas, water, rents, rates, taxes, insurance, books, stationery, and other miscellaneous expenses; also interest (Question 20), and depreciation of buildings, and using fixtures; and deduct all interest due on, or received from, your investments in other societies or banks, together with the expenses owing by you at the end of 1867.*	
27. What is the total amount of interest declared due on share and loan capital, including reserve or any other fund which may be credited with interest during the year 1868?*	
28. State the total amount allowed for depreciation of buildings, fixtures, utensils, land, and cottages, during the year 1868.*	
29. What is the amount of your entire liabilities on the 31st of December, 1868? You must include share and loan capital, with interest due thereon, together with the total amount owing for goods and expenses.*	
30. Have you a reserve fund of any kind? If so, state the amount thereof.	
31. What is the amount of your entire assets at the end of 1868, after making due allowances for depreciation of buildings and using fixtures?*	
32. What is the total value of your buildings, fixtures, or utensils, together with land and cottages, if any?*	
33. Have you any share or loan capital invested in other co-operative societies which are registered under "The Industrial and Provident Societies Act"? If so, state what amount.*	

Reg. No.

34. Have you any share or loan capital invested in any other society or Company registered under the Joint Stock Companies Act? If so, state what amount.*	
35. What amount of disposable net profit has your society realised from all sources during the year 1868, after making due allowance for interest on shares, loans, and reserve fund, together with depreciation of buildings and using fixtures?*	
36. What amount of dividend has been declared due to members during the year 1868?	
37. State the amount of dividend allowed to non-members during the year 1868.	
38. State the amount allowed for educational purposes during the year 1868.	

* In the answers made to the registrar, societies should give totals only, and not details.

_____ } Three members of the committee.

_____ } Treasurer.

_____ } Secretary.

25. *Recovery of penalties.*(*a*)—All penalties imposed by this act, or by the rules of any society registered under this act, may be recovered in a summary manner before two justices, as directed by an act passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria, chapter forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders.*

(*a*) This section has been repealed by "The Industrial and Provident Societies Act, 1867," s. 1. See, however, sect. 6 of that act with regard to the recovery of penalties.

26. *Short title.*—This act may be cited(*a*) as "The Industrial and Provident Societies Act, 1862."

(*a*) *This act may be cited, &c.*]—This act is now incorporated with "The Industrial and Provident Societies Act, 1867," *post*, and both may now be cited under the name of the latter act.

Schedule of Matters to be provided for in the Rules.(*a*)

1. Object and name, and place of office of the society, which must in all cases be registered as one of limited liability.
2. Terms of admission of members.
3. Mode of holding meetings and right of voting, and of making or altering rules.
4. Determination whether the shares shall be transferable, and in case it be determined that the shares shall be transferable, provision for the form of transfer and registration of shares and for the consent of the committee of management and confirmation by the general meeting of the society; and in case shares shall not be transferable, provision for paying to members balance due to them on withdrawing from the society.
5. Provision for the audit of account.
6. Power to invest part of capital in another society; provided that no such investment be made in any other society, not registered under this act, or the Joint-Stock Companies Act, as a society or Company with limited liability.
7. Power and mode of withdrawing from the society, and provisions for the claims of executors, administrators, or assigns of members.
8. Mode of application of profits.
9. Appointment of managers and other officers, and their respective powers and remuneration.

(*a*) The schedule annexed to "The Industrial and Provident Societies Act, 1867," *post*, is now substituted for this.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1867

(30 & 31 Vict. cap. 117).

An Act to amend the Industrial and Provident Societies Acts.—[20*th August* 1867.]

Whereas by "The Industrial and Provident Societies Act, 1862," "The Industrial and Provident Societies Act, 1852," and certain therein-recited acts for the amendment thereof, were repealed, and provision was made for the constitution and regulation of such societies in future:

And whereas doubts having arisen as to the effect of the said act in certain cases, it is expedient that the same should be removed, and that the provisions so made should be amended in other respects:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Sect.* 48 *of* 18 *&* 19 *Vict. c.* 63, *and sects.* 5, 9, 15, 16, *and* 25 *of* 25 *&* 26 *Vict. c.* 87, *repealed.*]—There shall be repealed, from and after the passing of this act, the forty-eighth section of the eighteenth and nineteenth *Victoria*, chapter sixty-three, and the fifth, ninth, fifteenth, sixteenth, and twenty-fifth sections of the recited act, and so much of the third section as excepts the working of mines and quarries from the objects for which any society may be established under the act.

2. *Limitation of interest of members.*—A society registered under this act may hold in its registered name any amount of interest in any other society so registered, but if any other person hold or claim in any society so registered any interest exceeding two hundred pounds sterling, such person shall incur a penalty equal to the excess of such interest over the said sum.

3. *Provisions of the Friendly Societies Acts applied to industrial and provident societies*—18 & 19 *Vict. c.* 63, *s.* 24—18 & 19 *Vict. c.* 63, *ss.* 41, 42, 43, *and* 21 & 22 *Vict. c.* 101, *s.* 1—18 & 19 *Vict. c.* 63, *s.* 30—18 & 19 *Vict. c.* 63, *s.* 37—21 & 22 *Vict. c.* 101, *s.* 4.—The provisions following contained in the acts undermentioned relating to friendly societies shall apply to all societies registered under this act, and no such provision shall be affected in its application to such societies by its repeal in regard to friendly societies, unless the contrary be expressly declared by the act repealing the same; and in applying such provisions words concerning the trustee of any society shall be taken to apply to the society, except the context precludes such construction; (that is to say,)

So much of "The Friendly Societies Acts, 1855 and 1858," as relates to—

The punishment of fraud (*a*) in withholding any money or other property belonging to any society:

The determination of disputes by the County Courts in England, (*b*) the Sheriff's Court in Scotland, (*c*) and the assistant barrister in Ireland, and the orders and proceedings for this purpose:

The reception of rules and other instruments in evidence:

The exemption of rules and other instruments from stamp duty:

The power to any society to change its name.

(*a*) *The punishment of fraud, &c.*]—Where an officer of a friendly society received as such officer moneys belonging to the society, and afterwards executes an assignment for the benefit of his creditors, but the specific moneys received by the officer in his official capacity are not traced to the assignees, they are not liable to the provisions of 18 & 19 Vict. c. 63, s. 24, if they refuse to pay to the society the amount of such moneys: (*Ex parte O'Donnell*, 14 W. R. 83, Q. B.)

(*b*) *The County Courts in England.*]—By sect. 41 of "The Friendly Societies Act, 1855 (18 & 19 Vict. c. 63), jurisdiction is given in certain cases to the County Court of the district in which the usual or principal place of business of the society is situated; and it was held that the County Court of any district in which any usual place of business of the society is situated, and not only that in which its principal place of business is situated, has jurisdiction under the act: (*Shea* v. *United Assurance Society of St. Patrick*, Law Rep. 3 C. P. 21.)

See, also, *Minor* v. *London and North-Western Railway Company*, 1 C. B. N. S. 325; 26 L. J. C. P. 39, and p. 121, *ante*.

A rule of a friendly society provided that a dispute of any kind whatsoever arising under the rules should be referred to a committee. By another rule any member in the receipt of the gifts of the society being

found imposing on the society was to be expelled. A member of the society in the receipt of pay was charged with receiving full pay when he was only entitled to half-pay, and the matter being referred to a committee he was expelled, but without being heard before the committee. Upon application for a *mandamus* to reinstate him as a member of the society, it was held that the County Court had jurisdiction, under 18 & 19 Vict. c. 63, ss. 41, 42, to order him to be reinstated, if he had been improperly expelled: (*Ex parte Wooldridge*, 1 B. & S. 844; 5 L. T. N. S. 609; 31 L. J. Q. B. 122.)

(*c*) *The Sheriff's Court in Scotland.*]—Some members of a Scotch society having sought relief before the sheriff, the defendants pleaded to the jurisdiction, whereupon the sheriff directed a case to the Court of Chancery, under 22 & 23 Vict. c. 63, to ascertain whether that court had jurisdiction in such a case in England. It was held, that the case did not come within the statute, and the court declined to express its opinion: (*Brodie* v. *Johnson*, 30 Beav. 129.)

See, also, on the subject of the settlement of disputes, *Hornby* v. *Close*, Law Rep. 2 Q. B. 150; *Farmer* v. *Giles*, 5 H. & N. 753; *Morrison* v. *Glover*, 4 Exch. 430; *Cutbill* v. *Kingdom*, 1 Exch. 494; *Kelsall* v. *Tyler*, 11 Exch. 513; *Reg.* v. *Trafford*, 4 E. & B. 122; *Fleming* v. *Self*, 3 De G. Mac. & G. 997; *Smith* v. *Lloyd*, 26 Beav. 507; *Crisp* v. *Bunbury*, 8 Bing. 394; *Reeves* v. *White*, 17 Q. B. 995; *Reg.* v. *Mildenhall Savings Bank*, 6 A. & E. 952; *Timms* v. *Williams*, 3 Q. B. 413.

4. *Certificate of registration.*—Two copies of the rules shall be forwarded to the Registrar of Friendly Societies(*a*) of England, Scotland, or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided(*b*) by "The Friendly Societies Act, 1855," and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate(*c*) by the name therein described, having a perpetual succession and a common seal,(*d*) with power to purchase, erect, and sell, and convey,(*e*) or to hold lands and buildings with limited liability.

(*a*) *The Registrar of Friendly Societies, &c.*]—The office of Registrar of Friendly Societies is provided for by "The Friendly Societies Act, 1855" (18 & 19 Vict. c. 63), ss. 6—8.

(*b*) *Shall be dealt with by him in the manner provided, &c.*]—"The Friendly Societies Act, 1855" (18 & 19 Vict. c. 63), s. 26, provides as follows:—"Two printed or written copies of such rules, signed by three of the intended members, and the secretary or other officer shall be transmitted to the registrar aforesaid, and the said registrar shall advise with the secretary or other officer, if required for the purpose of ascertaining whether the said rules are calculated to carry into effect the intentions and object of the persons who desire to form such society, and if the registrar shall find that such rules are in conformity with law and with the provisions of this act he shall give a certificate in the form set forth in the second schedule to this act, and shall return one of the said copies to

the said society, and shall keep the other in such manner as shall from time to time be directed by one of Her Majesty's Principal Secretaries of State, and for which certificate no fee shall be payable to the said registrar; and all rules when so certified as aforesaid shall be binding on the several members of the said society: Provided always, that it shall not be lawful for the said registrar to grant any such certificate to a society assuring to any member thereof a certain annuity or certain superannuation, deferred or immediate, unless the tables of contributions payable for such kind of assurance shall have been certified under the hand of the actuary to the commissioners for reduction of the national debt, or by an actuary of some life-assurance Company established in London, Edinburgh, or Dublin, who shall have exercised the profession of actuary for at least five years, and such certificate be transmitted to the registrar, together with the copies of the rules aforesaid."

(*c*) *The members of such society shall become a body corporate.*]—As to a body corporate, see p. 33, *ante*.

An industrial society, formed with unlimited liability under the act of 1852, becomes, upon registration under the act of 1862, or as it would now be termed "The Industrial and Provident Societies Act, 1867," a society with limited liability.

F. was the holder of fully paid-up shares in an industrial society formed, with unlimited liability, under "The Industrial and Provident Societies Act, 1852" (15 & 16 Vict. c. 31). After the passing of the act of 1862 which repeals the act of 1852, the society, being in difficulties, was registered under that act for the purpose of being wound-up, it having been held that a winding-up order could not be made under the repealed act. Upon motion to settle the list of contributories, it was held that F.'s name must be omitted, notwithstanding there were debts contracted before the registration of the Company under the later act: (*Re Sheffield and Hallamshire Ancient Order of Foresters' Co-operative and Industrial Society, Fountain and Swift's case*, 34 L. J. Ch. 593, on appeal.)

Goods were supplied to a society before the passing of the act of 1862, and the society was afterwards registered under the act. In an action commenced in 1863 against the committee of management for the value of the goods, it was held that the action was rightly brought, the act having by the repeal of former acts (under which the officers of the society might be sued), restored the plaintiff's common-law right, and the proviso in the 6th section including only proceedings then pending, and not claims or rights of action: (*Dean* v. *Mellard*, 15 C. B. N. S. 10; 10 Jur. N. S. 346).

The trustees of a society formed under 15 & 16 Vict. c. 31, but not registered under the act of 1862, cannot be sued in an action commenced after the passing of this act, as the previous act is absolutely repealed by it without any saving clause: (*Touthill* v. *Douglas*, 33 L. J. Q. B. 66.)

See, also, *Linton* v. *Blakeney Joint Co-operative Industrial Society*, 3 H. & C. 853; 34 L. J. Ex. 211.

A society based upon irrational principles, and seeking to realise a visionary and unattainable object under a newly-invented system of morality, was held not to be founded for the propagation of irreligious and immoral doctrines, so as to prevent a creditor from recovering his debt: (*Pare* v. *Clegg*, 29 Beav. 589.) It was decided in the same case that the rules, as certified by the registrar, must be treated as conclusive as to the character of the society.

(*d*) *A common seal.*]—See p. 48, *ante*, as to the common seal of a corporation.

(*e*) *To purchase, erect, and sell and convey, &c.*]—These words were not in the corresponding section (sect. 5, repealed by this act) of the act of 1862.

5. *Power to nominate persons unto whose name the interests of members may be transferred at their death.*—A member of any society(*a*) registered under this act may, by any writing under his hand delivered at the registered office of the society, appoint any person being the husband, wife, father, mother, child, brother, sister, nephew, or niece of such member, to whom his shares in the society shall be transferred at his decease, provided that the sum credited to the account of such member in the books of the society does not exceed fifty pounds sterling, and may from time to time revoke or vary any such nomination by a writing under his hand similarly delivered; and the secretary of every such society shall keep a book wherein the names of all persons so nominated shall be regularly entered, and the shares comprised in any such nomination shall be transferable to the nominee, although the rules of the society declare its shares to be generally not transferable: Provided, nevertheless, that the society may, in lieu of making such transfer, elect to pay to any nominee the full value of the shares comprised in the nomination to him, and shall pay him the full value of any such shares which, if transferred into his name, would increase his interest in the society to an amount exceeding two hundred pounds sterling.

(*a*) *A member of any society, &c.*—This section is substituted for sect. 16 of the act of 1862, which is repealed.

6. *Recovery of penalties.*(*a*)—All penalties imposed by "The Industrial and Provident Societies Act, 1862," or by this act, or by the rules of any society registered under the said act, shall be recoverable, with costs, and dealt with in a manner directed by the Friendly Societies Act, in regard to the penalty thereby imposed, on any default in transmitting the returns thereby required, and at the suit of the registrar in the case of penalties imposed by the recited act or by this act, or in the case of penalties imposed by the rules of any society so registered at the suit of the society.

(*a*) This section has been substituted for sect. 25 of the act of 1862.

7. *Alterations of or additions to rules to be registered—Declarations to accompany copies.*—Two copies of every alteration of or addition to the rules(*a*) of every society registered under this act, signed by seven members of the

society and countersigned by the secretary, shall be sent to the registrar for his certificate of registration, and shall be accompanied by a declaration in the form contained in the schedule hereto annexed; and no alterations of or additions to the rules of any society registered under this act, made after the passing hereof, shall be valid until they are so certified.

(*a*) *Every alteration of or addition to the rules, &c.*]—There was no provision in the act of 1862 for altering the old rules or making new rules after the society was registered.

8. *Form of certificate.*—The registrar shall give his certificates respectively in the forms contained in the said schedule in the cases thereto mentioned.

9. *Penalties on not sending returns, &c.*—All returns required(*a*) under the 24th section of the recited act to be made to the Registrar of Friendly Societies shall be sent to him by each society registered thereunder on or before the first day of March in every year; and every such society which does not send any such return, or furnish copies thereof, or of its rules, as is required by the recited act or hereby, shall incur a penalty not less than forty shillings nor exceeding five pounds for each such offence; and every person who makes or orders to be made any false statement or any omission in any such return, with intent to deceive the registrar, shall incur a penalty not exceeding fifty pounds sterling for each return so dealt with.

(*a*) *All returns required, &c.*]—See p. 422, *ante*.

10. *Form of rules provided as moved.*]—The form of rules contained(*a*) in the schedule hereto may be adopted by any society desirous of being registered under this act, either without any addition or with any additions or alterations agreeable to law.

(*a*) *The form of rules contained, &c.*]—Whatever may have been the good intentions of the Legislature with regard to supplying a form of rules, they have not, up to the present, been carried into effect.

11. *Societies established previous to recited act to be deemed to be established from registration under either act.*—Every society established previous to the passing of the recited act for any of the purposes in such act mentioned shall be deemed to be a society established under such act from the registration of such society under the provisions of the recited act or of this act.

12. *Exemption from income tax.*—A society registered under this act, and not allowing any member thereof to hold or claim any interest therein or moneys therefrom exceeding in value the sum of two hundred pounds, shall not be chargeable with the duty under Schedule (C.) or Schedule (D.) of the income-tax acts: Provided that the above exemption shall not be construed to relieve any member of such society, or person employed by such society, to whom any portion of the profits of the society shall be paid, from assessment to the said duties in respect of such payment in any case in which the total income of such member or other person, inclusive of his portion of the said profits, shall amount to the sum of one hundred pounds or upwards.

13. *Lists to be returned to commissioners for special purposes containing the names, &c. of persons entitled to profits.*—The secretary or other managing officer of any society registered under this act shall, within twenty-one days after the sixth day of April in every year, transmit to the commissioners for special purposes of the income-tax acts a list containing the name and residence of every member of such society or other person to whom profits made by the society have been paid or shall be payable within or for the year ended on the fifth day of April preceding, and the amounts paid or payable to each member or other person, and thereupon the special commissioners shall take the necessary steps for charging the said duties, under the regulations of the income-tax acts, on such of the said persons as may be liable thereto; and any secretary or other officer of any such society who shall neglect to make out and deliver to the commissioners for special purposes, within the time specified by this act, a list containing the particulars hereby required, shall forfeit and pay the sum of fifty pounds, to be recovered in like manner as penalties imposed for like default by the income-tax acts.

14. *Short title—Construction of act.*—The recited act, so far as it is not hereby repealed, shall be incorporated(*a*) with this act, and may be cited with it as "The Industrial and Provident Societies Act, 1867," and the schedule hereto annexed shall be substituted for the schedule thereto; all societies registered under the recited act shall be taken to be registered under this act; and in construing the recited act and this act provisions relating to the rules or name of any society shall apply to the registered rules and name

thereof for the time being, and the registrar shall mean the Registrar of Friendly Societies for England, Scotland, or Ireland, according to the place where the office of the society is situate.

(*a*) *Shall be incorporated, &c.*]—The two acts now come under one denomination and may be cited as a single act.

Schedule referred to in this Act.

Of Matters to be provided for by the Rules of Societies established under this Act.

1. Object, name, and place of office of the society.
2. Terms of admission of members.
3. Mode of holding meetings and right of voting, and of making or altering rules.
4. Determination whether the shares, or any number thereof, shall be transferable, and in case it be determined that the shares, or any number thereof, shall be transferable; provision for the form of transfer and registration of shares, and for the consent of the committee of management and confirmation by a general meeting of the society; and in case it be determined that the shares shall not be transferable, provision for paying to members the balance due to them on withdrawing from the society.
5. Provision for the audit of accounts.
6. Determination whether and by what authority any part of capital may be invested in or on the security of another society, provided that no such investment be authorised in any society not registered under this act, or under the Companies Act as a Company with limited liability.
7. Determination whether and how members may withdraw from the society, and provisions for the claims of executors, administrators, or assigns of members and for paying nominees in the case herein mentioned.
8. Mode of application of profits.
9. Appointment of managers and other officers, and their respective powers and remuneration.
10. Provisions for the custody, use, and device of the seal of the society, which shall in all cases bear the registered name thereof.

Forms of Certificate to be given under this Act.

Certificate of Registration of a Society.

I, Registrar of Friendly Societies in [England, Scotland, *or* Ireland] hereby certify that the Society, Limited, established at in the county of is registered under "The Industrial and Provident Societies Act, 1867."

Given under my hand this day of 18 .

Registrar of Friendly Societies.

Certificate, to follow Rules upon the Registration of a Society established under this Act.

I hereby certify that the foregoing rules of the Society, Limited, are in conformity with law, and that the said society is duly established from the present date, and is subject to the provisions and entitled to the privileges of the acts relating to Industrial and Provident Societies.

Day of 18 .

_____ Registrar of Friendly Societies.

Certificate of Alterations of Rules.

I, Registrar of Friendly Societies in [England, Scotland, *or* Ireland,] do hereby certify that the foregoing alterations of [*or* additions to], the rules of the Society, Limited, established at in the county of are in conformity with law, and are registered from the present date under the Industrial Societies Act.

Given under my hand this day of 18 .

_____ Registrar of Friendly Societies.

Certificate of changed Name.

I, Registrar of Friendly Societies in [England, Scotland, *or* Ireland,] hereby certify that the registered name of the Society, Limited, established at in the county of is changed from the date thereof to the name following,— Society, Limited, and is in accordance with the Industrial and Provident Societies Acts.

Given under my hand this day of .

_____ Registrar of Friendly Societies.

FORM OF DECLARATION TO ACCOMPANY ALTERATIONS OF OR ADDITIONS TO RULES.

Register No._____.

(State Street, Parish, and County of Place of Business.)

_____ Society,
Limited, established at _____
_____
_____
_____

I, of the clerk* of the above-mentioned society, do solemnly and sincerely declare that in the altering, amending, or rescinding the rules of the said society, *or* making new rules (*as the case may be*), the rules of the said society have been duly complied with.

And I make this solemn declaration, conscientiously believing the

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* Secretary, *or* one of the officers.

same to be true, and by virtue of the provisions of an act made and passed in the fifth and sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to Substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths."

Taken and received before me, one of Her Majesty's justices of the peace for the said county of at in the said county, this day of 18 .

COUNTY COURT ORDERS, 1867.

Common Law.

Proceedings under the Literary and Scientific Institutions, the Friendly Societies, and the Industrial and Provident Societies Acts (17 & 18 *Vict. c.* 112; 18 & 19 *Vict. c.* 63; 30 & 31 *Vict. c.* 117).

269. In proceedings in the County Courts under 17 & 18 Vict. c. 112, 18 & 19 Vict. c. 63, and 30 & 31 Vict. c. 117, a plaint shall be entered and a summons shall be issued thereon, and the rules and practice of such courts shall be adopted with respect to such proceedings so far as the same are applicable.

270. Where a defendant is a trustee, member of the general committee of management, treasurer, or other officer of an institution or society established under any act mentioned in the last rule, the summons shall be served in the mode, if any, prescribed by the act under which any such institution or society is established or regulated, and if no mode of service be thereby prescribed, then at the usual place of business of the institution or society, and if there be no such place of business, then according to the ordinary practice of the court.

Equity.

Orders under "The Companies Act, 1867," *and "The Industrial and Provident Societies Act,* 1862" (25 & 26 *Vict. cc.* 87, 89; 30 & 31 *Vict. c.* 131).

The general order, rules, and forms of the High Court of Chancery regulating for the time being the mode of proceeding under "The Companies Act, 1862," shall be the Orders, Rules, and Forms in all proceedings in the County Courts for the winding-up of a society registered under "The Industrial and Provident Societies Act, 1862," or for the winding-up of

a Company under "The Companies Act, 1867," so far as the same are applicable: Provided that, where it shall appear to the court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the court to name some bank to be used in lieu of the Bank of England.

A Scale of Costs and Charges to be paid to Counsel and Attorneys under "The Industrial and Provident Societies Act, 1862," and "The Companies Act, 1867." *

Attorneys shall be entitled to charge and be allowed in proceedings under "The Industrial and Provident Societies Act, 1862," and in proceedings transferred to a County Court under "The Companies Act, 1867," the same costs and charges as they would be allowed in the Court of Chancery, except that where the amount of the subscribed capital of the society or Company shall not exceed 2000*l.*, they shall be allowed such costs and charges according to the lower scale authorised by the second rule of the 38th Consolidated General Orders of the Court of Chancery.

Schedule of Fees of Court (A.)

In proceedings under "The Friendly Societies Act, 1855," and "The Industrial and Provident Societies Act, 1867," the poundage shall be estimated upon the amount in dispute; but if the application to the court is not for the payment of money, the poundage shall be estimated upon the amount of the sum of money stated by the applicant to be that which he will apply to the court to order the payment of. In the above cases where the poundage would, but for this direction, be estimated on an amount exceeding twenty pounds, it shall be estimated at twenty pounds only.

Schedule (B.)

Proceedings under "The Industrial and Provident Societies Act, 1862."

	£	*s.*	*d.*
For every petition presented to a court, under section 17 of the above act	1	0	0
For every order for winding-up	2	0	0
For every sitting or adjourned sitting of the court in the matter after the order for winding-up shall have been made	0	15	0
For the taxation of every bill of costs	0	10	0

* These tables of costs and fees are taken from the County Courts Orders, 1867.

THE LIQUIDATION ACT, 1868

(31 & 32 Vict. cap. 68).

An Act to facilitate Liquidation in certain Cases of Bankruptcy Arrangement and Winding-up —[31*st July* 1868.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

1. *Short title.*—This act may be cited as "The Liquidation Act, 1868."

2. *Interpretation of terms.*—In this act—

The term "arrangement" means arrangement, conveyance, or assignment by a debtor, with or for the benefit of his creditors, by deed registered under "The Bankruptcy Act, 1861":

The term "deed" includes any instrument:

The term "winding-up" means the winding-up of a Company in any manner under "The Companies Act, 1862," and any act amending the same:

The term "liquidators" means assignees in a bankruptcy, trustees, or inspectors, or other persons acting on behalf of a debtor and his creditors, under an arrangement, or official or other liquidators in a winding-up.

3. *Extent of act.*—This act shall not extend to Scotland or Ireland.

4. *Application of act.*—This act shall have effect in the following cases only:—

(1.) In case of bankruptcy, where the adjudication has been made before the passing of this act, or a deed of arrangement has been registered before the passing of this act and adjudication of bankruptcy supervenes before the completion of the liquidation under the deed.

(2.) In case of arrangement, where the deed has been registered before the passing of this act.

(3.) In case of winding-up, where proceedings are pending at the passing of this act.

DIVISION OF ASSETS IN SPECIE.

5. *Power to prepare and file scheme.*—If in any case of bankruptcy, arrangement, or winding-up within this act it appears to the liquidators that it will be for the benefit of the estate in liquidation that any part of the assets thereof should be divided in specie, or be otherwise disposed of without sale, they may prepare and file in the Court of Chancery a scheme in that behalf.(*a*)

(*a*) *A scheme in that behalf.*]—As to the practice to be followed in preparing and filing a scheme, see the General Order of April, 1869, *post.*

6. *Provision in scheme as to secured creditors.*—A scheme may in any case provide that any class of secured creditors shall take in or towards discharge of their claims on the estate the securities held by them at a value to be determined by the court or in such manner as the court shall direct.

7. *Notice of scheme.*—Notice of the filing of the scheme(*a*) shall be published and given as general orders under this act direct.

(*a*) *Notice of the filing of the scheme, &c.*]—See Rule 10 of the General Order, *post.*

8. *Application for confirmation.*—At such time after the filing of the scheme as general orders under this act direct the liquidators may apply to the court(*a*) in a summary way for confirmation thereof.

(*a*) *The liquidators may apply to the court, &c.*]—See Rule 11 of the General Order, *post.*

9. *Confirmation of scheme by court.*—After hearing the liquidators, and any creditors or other parties whom the court thinks entitled to be heard on the application, the court, if satisfied that no sufficient objection has been established to the scheme, may confirm the scheme, with or without alteration or addition.

10. *Effect of scheme.*—The scheme, as and when confirmed by the court, shall be binding and effectual to all intents (any rule of law or equity or course of procedure in any court

notwithstanding), and the liquidators and debtor and others affected by the scheme shall conform with the conditions thereof, and accordingly shall (subject to the directions of the court) execute and do all deeds and things necessary or proper for transferring or vesting any portion of the assets of the estate in accordance with the scheme.

11. *Regard by court to wishes of creditors.*—The court, in determining on the confirmation of a scheme, and in all proceedings and matters under or relating to a scheme, may have regard to the wishes of the creditors or of separate classes of creditors, as proved to the court by any sufficient evidence; and the court may, if it thinks it expedient for the purpose of ascertaining their wishes, direct meetings of creditors or of classes of creditors to be summoned and held, which meetings shall be regulated in such manner as the court thinks fit (regard being always had to the value of the debts due to the several creditors and to the nature and amount of their respective securities, if any), and may appoint a person to act as chairman of any such meeting, and to report the result thereof to the court.

FORECLOSURE BY NOTICE.

12. *Power for creditors to foreclose by notice.*—For facilitating the settlement of claims of secured creditors the following provisions shall have effect:—

(1.) In any case of bankruptcy, arrangement, or winding-up within this act, any person being or claiming to be a creditor on the estate in liquidation, and holding or claiming a security, charge, or lien on the assets of the estate, may, without suit, give notice in writing to the liquidators and the debtor, stating his debt or demand, and the security, charge, or lien which he holds or claims, and requiring payment of his debt or demand within a time therein specified, not being less than six months from the delivery of the notice:

(2.) Unless the liquidators within the time specified either comply with the notice, or give to the creditor a counter-notice to the effect that they dispute his right to the security, charge, or lien held or claimed by him, then from and after the expiration of the time specified the creditor shall be entitled and bound to retain and accept, in full and final satisfaction of the debt or demand stated in his notice,

that portion of the assets on which he holds or claims the security, charge, or lien, and all right and title of the liquidators and debtor therein shall thenceforth be foreclosed:

(3.) The liquidators and debtor shall, at the cost of the estate, execute and do all deeds and things necessary or proper for vesting in the creditor such portion of the assets as aforesaid, free from all right of redemption by such liquidators or debtor.

PROCEDURE.

13. *General orders and forms in schedule.*—General orders for the better execution(*a*) of this act and for the regulation of procedure thereunder shall be from time to time made by the Lord Chancellor of Great Britain with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the vice-chancellors, or of any two of those judges; and subject to the provisions of any such General Orders, and until any such are made, the forms given in the schedule to this act, or forms to the like effect, may be used for the purposes therein indicated, with such variations as circumstances require, and when used shall be deemed sufficient.

(*a*) *General Orders for the better execution, &c.*]—See the General Orders of April, 1869, *post*.

THE SCHEDULE.

FORMS.

I.

NOTICE BY CREDITOR.

"*The Liquidation Act*, 1868."

To A. B. and C. D., being the assignees in bankruptcy [*or, as the case may be*] of E. F., of , and to the said E. F.

I [*or*, we], the undersigned, being a creditor [*or*, creditors] of the above-named E. F. to the amount of £ and holding the following

securities, namely [*here the nature of the securities claimed, and whether legal or equitable, to be fully stated*], do hereby require you (or some or one of you) to pay off my [*or*, our] said debt or demand within [*not less than six calendar months*] from the receipt by you of this notice.

Dated this day of

(Signed) G. H.

II.

COUNTER-NOTICE BY LIQUIDATORS.

"*The Liquidation Act*, 1868."

To G. H.

We, the undersigned, being the assignees in bankruptcy [*or, as the case may be*] of the estate of E. F., do hereby give you notice that we dispute your right to the security, charge, or lien held or claimed by you on a portion of the assets of the estate in respect of the debt or demand of £ claimed by you.

Dated this day of

(Signed) A. B.
C. D.

GENERAL ORDER

OF THE

HIGH COURT OF CHANCERY.

THURSDAY, THE 29TH DAY OF APRIL, 1869.

ORDER OF COURT.

Thursday, the 29th day of April, 1869.

THE Right Honorable WILLIAM PAGE BARON HATHERLEY, Lord High Chancellor of Great Britain, with the advice and assistance of the Right Honorable JOHN LORD ROMILLY, Master of the Rolls, the Right Honorable the LORD JUSTICE SIR CHARLES JASPER SELWYN, the Right Honorable the LORD JUSTICE SIR GEORGE MARKHAM GIFFARD, the Honorable the VICE-CHANCELLOR SIR JOHN STUART, the Honorable the VICE-CHANCELLOR SIR RICHARD MALINS, and the Honorable the VICE-CHANCELLOR SIR WILLIAM MILBOURNE JAMES, doth hereby, in exercise and execution of the powers given to him by "The Liquidation Act, 1868," and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

1. Every scheme to be filed in the Court of Chancery pursuant to the statute 31 & 32 Vict. cap. 68, and every declaration, affidavit, petition, summons, notice, or other proceeding relative thereto, shall be intituled in the matter of "The Liquidation Act, 1868," and in the matter of the debtor, bankrupt, or Company, to whose assets the same relates, and, if the same relates to the assets of a Company which is being wound-up under "The Companies Act, 1862," and any act amending the same, then such scheme shall also be intituled in the matter of "The Companies Act, 1862."

2. Every such scheme shall be marked either with the words "Lord Chancellor," and the name of one of the Vice-Chancellors, or with the words "Master of the Rolls;" and the matter of such scheme (unless removed by some special order of the Lord Chancellor or the Lords Justices) shall accordingly be attached to the court of such Vice-

Chancellor, or to the court of the Master of the Rolls, as the case may be, in like manner, and for the same purposes, as causes, are attached to a particular court.

3. Where such scheme relates to assets of a Company which is being wound-up, under "The Companies Act, 1862," and any act amending the same, by the Court of Chancery or under the supervision of the Court of Chancery, the scheme shall be marked so as to be attached to the court of the judge to whose court the matter of such winding-up is attached.

4. Every scheme to be filed as aforesaid, shall be printed on paper of the same size and description and in the same style and manner as bills in Chancery are required to be printed; and every fifth line of each page thereof shall be numbered.

5. Every such scheme shall be filed in the Office of the Clerks of Records and Writs, and shall have indorsed thereon the name and address of the solicitor and London agent (if any) of the liquidators, and also the address for service of such solicitor in cases where an address for service is required by the general orders of the court.

6. At any time after the expiration of four days from the filing of any such scheme, any person claiming to be interested as a creditor or contributory in the affairs of the debtor, bankrupt, or Company to whose assets the scheme relates, may, by a requisition in writing, delivered at the office of the solicitor of the liquidators, or of his London agent (if any), and stating the nature of the interest which such person claims, demand any number, not exceeding ten, of printed copies of the scheme; and the copies so required shall, within twenty-four hours after such demand, and on payment for each such copy at the rate of one half-penny per folio, be delivered to the person so requiring the same, with a certificate thereon by such solicitor or his London agent, that they are true copies of the scheme filed.

7. Except in cases where an affidavit, verifying a list of creditors, shall already have been filed, or a list of creditors shall have been made out under the direction of the court, the liquidators, on the day on which the scheme is filed, or within such further time as the judge shall allow, shall file, in the Office of the Clerks of Records and Writs, an affidavit made by some person competent to make the same, verifying

a list containing the names and addresses of the creditors, and the amounts due to them respectively, so far as the same can be ascertained, and leave the said list, and an office copy of such affidavit, at the chambers of the judge.

8. Copies of the scheme, and copies of the list of creditors, containing the total amount due to them, but omitting the amounts due to them respectively, or (if the judge shall so direct), complete copies of such list, shall be kept at the offices of the solicitor of the liquidators and his London agent (if any); and any person claiming to be interested as creditor or contributory, may, at any time during the ordinary hours of business, inspect and take extracts from such scheme and copy list on payment of the sum of one shilling.

9. The liquidators shall, within seven days after the filing of the scheme, or within such further time as the judge may allow, send to each creditor whose name is entered in the said list, or to such of them as the judge shall think fit, and in cases of winding-up, to such of the contributories as the judge shall think fit, a notice of the filing of the scheme. Such notice shall state the time when the scheme was filed, and the place or places where the scheme may be inspected, and copies thereof obtained; and shall be sent through the post in a prepaid letter addressed to each of the persons to whom the same is to be sent at his last known address or place of abode.

10. Notice of the filing of the scheme may also, if the judge shall think fit, after the filing thereof, be published at such times and in such newspapers as the judge shall direct. Every such notice shall contain such particulars as are mentioned in the preceding rule.

11. After the expiration of one calendar month from the filing of the scheme, or at such earlier time as the judge shall think fit, the liquidators may present a petition for confirmation of the scheme. It shall not be necessary in such petition to set forth the scheme, but it shall be sufficient to refer thereto.

12. When any petition to confirm any such scheme is presented, the liquidators shall apply to the judge in chambers to appoint the day on which the same is to come into the paper for hearing, such day not to be before the expiration of three weeks from the time of such application, and shall cause a notice of such presentation to be inserted in such

two newspapers as the judge in chambers shall direct. Such notice shall state the day on which the scheme was filed, and the day on which the petition was presented, and the day on which the same is directed to come into the paper for hearing, and the name and address of the solicitor and London agent (if any) of the liquidators.

13. The petition shall not come on to be heard until at least fourteen clear days after the first insertion of such notice as aforesaid. Such notice shall at least once in every entire week, reckoned from Sunday morning till Saturday evening, which shall have elapsed between the first insertion thereof, and the day on which such petition is directed to come into the paper for hearing, be again inserted in such newspapers as aforesaid, on such day or days as the judge in chambers shall direct.

14. Any creditor, contributory, or other person whose rights or interests are effected by such scheme, and who shall be desirous to be heard in opposition to the confirmation thereof, shall, at least two clear days before the day on which the petition for confirmation is directed to come into the paper for hearing, enter an appearance in the Office of the Clerks of Records and Writs, and, in default of so doing, shall not be entitled to be heard, unless by the special leave of the court.

15. Any person so entering an appearance shall be deemed to have submitted himself to the jurisdiction of the court as to payment of costs, and otherwise.

16. No order for confirming a scheme, whether with or without alteration or addition, shall be enrolled until the expiration of thirty days from the day of the same having been pronounced, exclusive of vacations.

17. No caveat shall be entered to stay the enrolment of any order for confirming a scheme, with or without alterations or additions; but every such order may be enrolled after the expiration of thirty days from the day of the same being pronounced, unless in the meantime a petition for a rehearing shall have been presented, and an order for setting down such petition obtained and served upon the liquidators, such thirty days to be exclusive of vacations.

18. No petition for a rehearing, either before the same judge or before the Lord Chancellor or the Lords Justices, of the case on which any order confirming a scheme, with or

without alterations or additions, or order refusing to confirm a scheme has been made, shall, unless by special leave of the Lord Chancellor or the Lords Justices, be presented after the expiration of thirty days, exclusive of vacations, from the day on which such order was pronounced, notwithstanding that such order may not have been enrolled.

19. When an order has been made for confirming a scheme, with or without alterations or additions, no person who neither has entered an appearance as aforesaid, nor has by virtue of such special leave as aforesaid been heard in opposition to the confirmation of the scheme, nor is the legal personal representative of a person who has entered an appearance or been heard in opposition as aforesaid, shall be at liberty to present a petition for rehearing before the same judge, or before the Lord Chancellor or the Lords Justices, unless the Lord Chancellor or the Lords Justices shall, by special order, to be applied for by motion on notice to the liquidators, to be served on their solicitor or London agent, give leave to such person to present a petition for a rehearing.

20. All orders made in chambers under "The Liquidation Act, 1868," shall be drawn up in chambers unless specially directed to be drawn up by the registrar, and shall be entered in the same manner and in the same office as other orders drawn up in chambers.

21. In cases not expressly provided for by the said act, or by the rules of this order, the general orders and practice of the court (including the course of proceeding and practice in the judges' chambers, and the course of proceeding and practice as to rehearings before the same judge, or before the Lord Chancellor or Lords Justices), shall, as far as such general orders and practice are applicable and not inconsistent with the said act or this order apply to all proceedings in the Court of Chancery under the said act.

22. The power of the court and of the judge in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any directions as to the course of proceeding, shall be the same in proceedings in Chancery under the said act as in proceedings under the ordinary jurisdiction of the court.

23. Solicitors shall be entitled to charge, and be allowed for all duties performed under "The Liquidation Act, 1868," such of the fees on the higher scale, authorised by the 2nd

rule of the 38th of the Consolidated Orders and the Regulations as to solicitors' fees subjoined thereto as are applicable, unless the court or judge shall otherwise specially direct.

24. The fees of court set forth or referred to in the schedule hereto, shall be paid in relation to proceedings in Chancery under the said act, and shall be collected by means of stamps in manner provided by the general orders of the court.

25. This order shall come into operation on the 1st day of May, 1869.

26. The general interpretation clause in the Consolidated General Orders shall apply to the rules of this order; and in this order the term "liquidators" has the same meaning as in "The Liquidation Act, 1868," and the word "contributory" has the same meaning as in "The Companies Act, 1862."

HATHERLEY, C.
ROMILLY, M.R.
C. JASPER SELWYN, L.J.
G. M. GIFFARD, L.J.
JOHN STUART, V.C.
RICHD. MALINS, V.C.
W. M. JAMES, V.C.

THE SCHEDULE.

Fees to be collected by means of Stamps.

In the judges' chambers and in the respective offices of the registrars, the examiners, and the taxing masters, such of the fees by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, directed to be collected and paid, as are applicable.

In the Record and Writ Clerks' Office.

	£	s.	d.
For filing every scheme under "The Liquidation Act, 1868"	1	0	0
For every certificate of filing a scheme	0	5	0
And such other fees by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto directed to be paid and collected, as are applicable.			

In the Office of the Lord Chancellor's Principal Secretary.

For every petition	1	0	0

In the Office of the Secretary at the Rolls.

For every petition	1	0	0

THE COMPANIES SEALS ACT, 1864

(27 & 28 VICT. CAP. 19).

An Act to enable Joint-Stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries.—[13*th May* 1864.]

WHEREAS there have been and may be established in the United Kingdom Companies whose business is to be carried on in countries not situate in the United Kingdom, and it is convenient and desirable that investments may be made, and mortgages, conveyances, and leases taken, and contracts and engagements entered into, on behalf of the Company, in such countries, in the name of the Company: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*—This act may be cited for all purposes as "The Companies Seals Act, 1864."

2. *Power to Companies to have an official seal.*—Any Company, under "The Companies Act, 1862," whose objects require or comprise the transaction of business, as hereinbefore mentioned, in foreign countries, may cause to be prepared an official seal for and to be used in any place, district, or territory situate out of the United Kingdom in which the business of the Company shall be carried on, and every such official seal may and shall be a fac-simile of or as nearly as practicable a fac-simile of the common seal of the Company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: Provided that it shall be lawful for any such Company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used.

3. *Power to Companies to appoint agents abroad to affix seals.*—Every Company having or using any such official

seal as is authorised by this act, may from time to time, by any instrument or instruments in writing under the common seal of the Company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner appointed under the provisions of the Articles of Association of such Company, in any place, district, or territory situate out of the United Kingdom where the business of the Company shall for the time being be carried on, to affix such official seal to any deed, contract, or other instrument to which the Company is or shall be made a party in such place, district, or territory, and no other order of the Company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed, contract, or other instrument.

4. *As to the duration of powers granted under sect.* 3 *of this act.*—Every power granted under the last preceding section shall, as between the Company, their successors and assigns, on the one hand, and the person or persons dealing with the agent or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons, on the other hand, continue in force during the period, if any, mentioned in the instrument conferring the power, or if no power be there mentioned then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid.

5. *Person affixing seal to document to certify the date when so affixed.*—Whenever any such official seal as aforesaid shall be affixed to any document, the person affixing the same shall, by writing under his hand, and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed; and any document to which any such seal shall have been duly affixed within the district or territory or place, the name whereof is inscribed on such seal, shall bind the Company in the same way and to the same extent, and have the same force and effect, as if it had been duly sealed with the common seal of the company.

6. *Companies not to exercise powers of act unless authorised.*—The powers given by this act shall be exercised by such Companies only as are or shall be expressly authorised to exercise the same by their articles of association, or a special resolution passed(*a*) according to the provisions of "The

Companies Act, 1862," and shall be exercised by such companies subject to any directions or restrictions in their articles of association or the special resolutions contained.

(*a*) *A special resolution passed, &c.*]—For a definition of a special resolution, see p. 131, *ante*.

7. *Section* 55 *of* 25 *&* 26 *Vict. c.* 89, *not repealed.*—Nothing in this act contained shall operate to repeal the provisions(*a*) of the 55th section of "The Companies Act, 1862," but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this act had not been passed.

(*a*) *The provisions, &c.*]—See p. 133, *ante*.

THE MORTGAGE DEBENTURE ACT, 1865

(28 & 29 Vict. cap. 78).

An Act to enable certain Companies to issue Mortgage Debentures founded on Securities upon or affecting Land, and to make Provision for the Registration of such Mortgage Debentures and Securities.—[29*th June* 1865.]

Whereas it is expedient that provision should be made whereby such Companies as are hereinafter defined may be enabled to issue mortgage debentures founded upon the security of certain descriptions of property as hereinafter defined, and for the registration in the Office of Land Registry of such mortgage debentures and securities: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*—This act may be cited for all purposes as "The Mortgage Debenture Act, 1865."

2. *Extent of act.*—This act shall extend and apply to, and the powers hereby conferred may be exercised by, all such Companies incorporated and carrying on business under "The Companies Act, 1862," or under any act of Parliament, as now or hereafter may be entitled to advance money on the security of land; and in the construction of this act the expression "the Company" means any Company to which this act applies, and which shall for the time being be availing itself of the provisions of this act.

3. *No Company to avail themselves of act unless it shall comply with provisions herein named.*—No Company shall be entitled to avail itself of this act, unless it shall comply with the following provisions:

First. The Company must, under its act of Parliament or Memorandum of Association, be limited to one or more of the following objects;

1. The making of advances of money upon any of the following securities:—
   (*a*.) Lands, messuages, hereditaments, and real property, and all estates and interests therein:
   (*b*.) Rates, dues, assessments, and impositions upon the owners or occupiers of lands or real property imposed by or under the authority of any act of Parliament, public or private, royal charter, commission of sewers or drainage, or other sufficient legal authority:
   (*c*.) Charges and securities upon or affecting lands, messuages, hereditaments, and real property executed, made, given, or issued under the authority of any act of Parliament, public or private:
2. The borrowing of money on transferable mortgage debentures, or on one or more of the securities above-mentioned:

Provided that any Company already constituted under "The Companies Act, 1862," for the purpose of making advances on real securities, and whose Memorandum of Association includes but is not limited to the objects hereinbefore specified, may, by special resolution(*a*) in accordance with the provisions of that act, alter its memorandum for the purpose of limiting and so as to limit its objects and business to those so specified; and such Company shall thereupon be and become a Company constituting and carrying on business under such altered memorandum, and on its being shown to the satisfaction of the registrar hereinafter mentioned(*b*) that such alteration has been made, and that all obligations, if any, entered into by the Company in respect of the business which prior to such special resolution it was empowered to transact, other than the business to which it will be limited after the passing of such special resolution, have been discharged, and that the articles of association of the Company are in accordance with the altered memorandum, such Company shall be deemed to be a Company within this act and entitled to the benefits thereof:

Second. The Company must have a paid-up capital of not less than one hundred thousand pounds:

Third. Each share must be of the nominal value of not less than fifty pounds, of which not less than one-tenth nor more than one-half must have been paid up.

(*a*) *By special resolution, &c.*]—For a definition of a special resolution, see p. 131, *ante*.

(*b*) *The registrar hereinafter mentioned.*]—See sect. 6, *infra*.

4. *Power to Company to borrow money on mortgage debentures.*—Subject to the provisions and restrictions of this act, the Company may from time to time borrow money upon mortgage debentures to be issued by it under the authority of this act.

5. *Nature of securities on which debentures may be founded.*—The securities upon and in respect of which such mortgage debentures may be founded and issued shall be securities affecting property in England or Wales of the following descriptions:

(*a.*) Lands, messuages, hereditaments, or real property, or some estate or interests therein:

(*b.*) Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, hereditaments, or real property, imposed by or under the authority of any act of Parliament, public or private, royal charter, commission of sewers or drainage, or other sufficient legal authority:

(*c.*) Charges upon or affecting lands, messuages, hereditaments, or real property executed, made, given, or issued under the authority of any act of Parliament, public or private:

But, from the securities described in paragraph (*a*) shall be excepted securities upon mines or mineral property, quarries, brickfields, and factories, mills, and other buildings or works, for manufacturing purposes, and also securities upon leasehold estates, determinable upon a life or lives, and not renewable or held for a term, of which, at the date of the security, less than fifty years shall be unexpired, or which are subject to any rent beyond a nominal rent or a ground rent.

In construing this act the word "securities" shall be deemed to mean such securities as above defined and restricted, and no others.

6. *Securities on which Companies wish to issue debentures to be produced to registrar of titles, &c. for registry.*—When and from time to time as the Company may desire to use any securities in their possession for the purpose of founding and issuing mortgage debentures thereon, they shall produce the deeds or instruments creating such securities, duly exe-

cuted and stamped, to the Office of Land Registry established by the twenty-fifth and twenty-sixth Victoria, chapter fifty-three, in order to the same being duly registered in such Office of Land Registry, in accordance with the provisions of this act.

7. *Register of securities to be establishcd in Office of Land Registry.*—For the purposes of such registration there shall be established in such Office of Land Registry, in respect of every Company issuing mortgage debentures under this act, a register, with the name of the Company attached, which shall be called a register of securities under "The Mortgage Debenture Act, 1865."

8. *Registrar of titles, &c., to conduct business of register.*—The business of the registration shall be conducted in such office in accordance with such rules and regulations as the registrar, with the sanction of the Lord Chancellor, from time to time shall prescribe.

9. *Upon deposit with registrar of securities held by Company, and deeds relating thereto, and certificate of Company, and declaration of surveyor, registrar may register deed creating security.*—Upon production to and deposit with the registrar of the deeds or instruments purporting to be duly executed and stamped as aforesaid, together with a certificate under the common seal of the Company and the hands of one or more directors and of the secretary or accountant of the Company, in the form or to the effect of Form (A.) in the schedule hereto, and in the cases hereinafter mentioned of the certificate of a surveyor as hereinafter provided, the registrar shall enter in the proper register of securities the date of every such deed or other instrument, its nature, whether mortgage, grant of annuity, rent-charge or other security, the amount of the principal money or the amount and duration of the annuity thereby secured, and the tenure, extent, and situation of the property upon which the security is taken: Provided always, that the registrar shall not register any deed or instrument relating to or affecting any property not situate in England or Wales.

10. *Form of declaration of surveyor.*—The registrar shall not register any deeds or instruments for the purposes of this act until there shall have been produced for his inspection, and left to be registered, a voluntary declaration made by a surveyor or valuer, approved by the Inclosure Commis-

sioners for England and Wales, in the Form (B.) in the said schedule hereto, or to the like effect; but when such deeds or instruments relate exclusively to any of the securities described in section 5 (*b* and *c*), the report of the surveyor or valuer shall state only the value at the time of his report of the securities to be valued. There shall also be delivered with the beforementioned deeds or instruments a schedule, under the hand of the secretary or one of the directors of the Company, of the deeds and documents which were delivered to the Company at the time when the security was executed to them, which deeds or documents shall be deposited with the registrar, to be retained by him until withdrawn as hereinafter provided.

11. *Power to Company to issue debentures not exceeding amount of registered securities, &c.*—Upon the securities so from time to time registered, the Company may found and issue its mortgage debentures, but so that the aggregate principal sum secured by all the mortgage debentures shall never exceed at any one time the then total amount (to be ascertained in the manner hereinafter provided) of the registered securities of the Company, and also shall never exceed ten times the amount for the time being uncalled of its subscribed share capital.

12. *Before Company shall register any mortgage debentures, it shall file a return containing particulars herein named.*—Before any Company entitled to issue mortgage debentures under the provisions of this act shall register any such mortgage debentures under the provisions of this act, such Company shall file in the Office of the Land Registry a return containing the following and such other particulars as the registrar may from time to time require, which return shall be under the hand of one at least of the directors of the Company and the secretary:

(*a*.) The amount of the nominal capital of the Company, and the number and amount of shares into which the same is divided:

(*b*.) The amount per share and the aggregate amount paid up on the shares:

(*c*.) The assets or property of the Company at the date of the return, and how invested:

(*d*.) The names, addresses, and occupations of the directors and auditors of the Company:

(*e*.) The registered office of the Company.

13. *Company may issue new debentures in lieu of those paid off.*—If and whenever any of such mortgage debentures shall be paid off by the Company, the Company may issue new mortgage debentures in lieu thereof, and so from time to time, provided that the aggregate principal sum secured by all the mortgage debentures then issued and outstanding shall not exceed either of the beforementioned limits.

14. *Registered securities charged with payment of debentures, and not applicable for any other purpose until discharged from registration.*—All the registered securities for the time being of the Company shall be charged with the payment of the principal moneys and interest from time to time payable upon or in respect of all the mortgage debentures of the Company for the time being issued and outstanding; and no registered security, until discharged therefrom as hereinafter provided, shall be applicable to or available for any other purpose than the satisfaction of such principal moneys and interest, or be transferred, disposed of, or otherwise dealt with by the Company, unless and until the same shall have been discharged from registration in the manner hereinafter provided: Provided, nevertheless, that such registration shall not prevent the Company from receiving, applying, and giving a valid discharge for any interest which may from time to time be receivable upon or in respect of any such security, unless where a receiver shall have been actually appointed under the provisions of this act.

15. *Rights of holders of mortgage debentures.*—The persons from time to time entitled to the Company's mortgage debentures shall, proportionally, according to the amount of the moneys secured thereby, be entitled one with another to the benefit of the registered securities of the Company upon which such mortgage debentures are founded, without any preference one above another by reason of priority of the date of any such mortgage debenture or otherwise.

16. *Proceedings on redemption of securities.*—Whenever any person who has executed a security which has been registered under the provisions of this act is entitled to redeem such security, and has given notice to the Company of his intention so to do, the Company shall thereupon, and before the day appointed for the redemption, make application to the registrar for the purpose of having such security freed and discharged from the charge of the mortgage debentures issued by the Company, and upon a security of

at least equal value, as certified by a declaration of the surveyor or valuer before mentioned, being produced to him for registration and being registered accordingly, or its being shown to his satisfaction that at least an equivalent of mortgage debentures issued under the provisions of this act has been cancelled, he shall allow the same to be so freed and discharged, and shall cause an entry to be made in the register of securities of the said security being discharged, and shall redeliver to the Company the several deeds or instruments to which such security relates, and which were delivered to the registrar for registration, under the provisions hereinbefore contained, and such entry shall be conclusive evidence of such discharge.

17. *Owner of registered security upon default of Company may obtain the discharge thereof from Company's debentures.*— If the Company shall not have procured such discharge on or before the day appointed for redemption, the mortgagor or other person entitled to redeem such security may apply to the High Court of Chancery by summons, calling upon the Company to show cause why such security is not so discharged, and upon hearing such summons the judge shall appoint a day by which the discharge shall be obtained, and in default thereof shall order that the amount of principal and interest money due upon such security shall, by a day to be named in the order, be paid into the bank to the credit of the Accountant-General of the Court of Chancery to the account of the Company's mortgage debentures, and shall make such order as to the costs of and incidental to the application as the court may deem just.

Upon production to and deposit with the land registrar of such order, together with the Accountant-General's certificate of such payment into court as aforesaid, the registrar shall make an entry in the proper register of securities of the discharge of such security from the Company's mortgage debentures, and shall deliver to the person named in such order the several deeds and instruments to which such security relates, and which were delivered to the registrar under the provisions herein contained.

Upon the Company proving to the satisfaction of the court, by the production of a certificate of the registrar, either that a security at least equal in value to the amount so paid into court as aforesaid has been registered as aforesaid, or that an equivalent amount of the Company's mortgage debentures has been cancelled, the court shall direct

the payment out of court to the Company of the amount so paid in, together with any dividends that may have accrued due thereon in the meantime.

18. *Registrar to determine fees.*—There shall from time to time be paid by the Company or others, in respect of business transacted under this act by the registrar, such fees as the registrar, with the sanction of the Lord Chancellor, from time to time prescribes; and there shall also be paid by the Company to the registrar, the assistant registrar, and the other officers and servants of the office respectively, such remuneration for their respective services in the execution of this act as the Lord Chancellor from time to time sanctions.

19. *Collection of fees.*—The following rules shall be observed with respect to the collection of fees:

(*a.*) All fees so payable shall be received by stamps denoting the amount of fees payable, and not in money:

(*b.*) When a fee is payable in respect of a document, a stamp denoting the amount of the fee shall be affixed to the document and properly cancelled:

(*c.*) The Commissioners of Inland Revenue shall provide everything that is necessary for the collection of the moneys by this act directed to be paid by stamps.

20. *Inspection of registrar.*—Subject to such regulations and on payment of such fees as the registrar, with the sanction of the Lord Chancellor, from time to time prescribes, any person may inspect and make copies of and extracts from the register.

21. *Company to make quarterly returns to registrar.*—When and so long as the Company issues any mortgage debentures under this act, and from time to time so long as any mortgage debenture so issued remains outstanding, the Company shall, within ten days after every quarter day as hereinafter defined, make out and deliver to the registrar the quarterly return by this act prescribed; (*a*) and every quarterly return shall be verified by the statutory declaration of two directors and the manager, secretary, or accountant of the Company.

(*a*) *By this act prescribed.*]—See sect. 23, *infra.*

22. *Quarter days for purposes of act.*—The thirty-first day of March, the thirtieth day of June, the thirtieth day of

September, and the thirty-first day of December in every year shall be the quarter days for the purposes of this act.

23. *Quarterly returns made to registrar to be as in Form (C.) in schedule, and to contain particulars herein named.*—Every quarterly return to be made by the Company to the registrar shall be in the form set forth in Form (C.) in the schedule to this act, or as near thereto as circumstances may admit, and shall contain, with reference to the then last quarterly day, the following particulars:

(*a.*) An account of all the securities of the Company's at that time registered, showing the aggregate of all principal sums remaining secured thereby and unpaid, and showing also the aggregate estimated value of all annuities and other periodical payments secured thereby:

(*b.*) An account showing the aggregate amount and the estimated value of the Company's other investments, and also the total number and aggregate nominal amount of the shares of the Company's capital held by persons registered in the Company's books as the holders thereof, and the aggregate amount paid up in respect of those registered shares, and the aggregate amount remaining to be paid thereon:

(*c.*) The numbers and dates of the several mortgage debentures issued by the Company and remainiug in force, and the several principal sums secured by those mortgage debentures respectively, and the aggregate amount thereof, and the rates of interest payable on those principal sums respectively, and the time or times for the repayment of those principal sums respectively.

24. *Estimate for quarterly returns of amount or value of annuities.*—The amount or value of the annuities and other periodical payments to be comprised in the quarterly returns shall be ascertained or estimated by an actuary approved by the registrar.

25. *Total amount of registered securities.*—The aggregate of all principal sums remaining secured by the registered securities, together with the aggregate amount or value of the said annuities as so ascertained or estimated, shall, for the purposes of this act, be deemed to be the total amount for the time beiug of the registered securities of the Company.

26. *Form of mortgage debenture.*—Every mortgage debenture from time to time issued by the Company shall be a deed under the common seal of the Company, duly stamped, as a mortgage for the amount secured, and bearing the signatures of at least two of the directors, and the countersignature of the manager, secretary, or accountant of the Company, and shall be in accordance with the Form (D.) in the schedule to this act, or as near thereto as circumstances admit.

27. *Company to keep "register of securities."*—The Company shall keep a register, to be called the "Register of securities," in which shall be entered the date of every deed or other instrument registered at the Land Registry for the purposes of this act, its nature, whether mortgage, grant of annuity, rent-charge, or other security, the amount of the principal money, or the amount and duration of the annuity thereby secured, the tenure, extent, and situation of the property upon which the security is taken, and if there are any charges which take priority of the Company's security, then the amount of such prior charges.

28. *Terms on which mortgage debentures may be issued.*—The mortgage debentures shall be for the payment of principal sums at a fixed time, to be named therein, not less than six months nor exceeding ten years from the date, with interest thereon in the meantime, at such rate as may be agreed, payable half-yearly or otherwise; and no mortgage debenture shall be issued for a less principal sum than fifty pounds.

29. *Mortgage debentures to be numbered.*—The mortgage debentures shall be numbered consecutively, beginning with number one, and every mortgage debenture shall be distinguished by its appropriate number: and notwithstanding the cancellation, loss, or destruction of a mortgage debenture, no other mortgage debenture shall bear the number of that so cancelled, lost, or destroyed.

30. *Indorsement to be made upon mortgage debenture.*—There shall be indorsed upon every mortgage debenture issued under the provisions of this act,—

(*a.*) The amount of the nominal capital of the Company issuing the same:

(*b.*) The number and amount of the shares into which such capital is divided:

(*c.*) The number of shares issued and the amount paid up in money upon each share so issued:

(*d.*) The amount of the registered securities of the Company as declared by the last quarterly return:

(*e.*) The registered office of the Company:

Provided that any inaccuracies or omissions in such indorsements shall not affect or invalidate the debenture.

31. *List of mortgage debentures to be kept by Company.*—A book containing a list of mortgage debentures shall be kept by the Company's secretary, and on the issue of any mortgage debenture an entry of the number and date thereof, and of the principal money secured thereby, and the name, description, and residence of the person to whom it is issued shall be entered in such book.

32. *Register of mortgage debentures.*—There shall also be established and kept in the Office of Land Registry, by or under the direction of the registrar, in respect of every Company issuing mortgage debentures under this act, a register of the mortgage debentures of the Company.

33. *Registration of mortgage debentures.*—When any mortgage debenture of the Company is duly executed and stamped, the Company shall produce it to the registrar, in order to its being registered, and thereupon the registrar shall enter in the register of mortgage debentures the number and the date of the mortgage debenture, the amount of the principal money thereby secured, and the time or times for repayment of the principal money thereby secured, and shall make on the mortgage debenture an indorsement stating the day on which the mortgage debenture was produced to him for registration, and of the page of the book in which the entry thereof is made; and without such an indorsement no mortgage debenture shall be a charge under this act upon the registered securities of the Company.

34. *Indorsement of registrar.*—The indorsement of the registrar on any mortgage debenture as hereinbefore mentioned shall be conclusive evidence that it is a mortgage debenture duly registered under the provisions of this act.

35. *No notice of trust receivable by Company, &c.*—No notice of any trust in respect of any mortgage debenture shall be receivable by the company or the registrar.

36. *Entry in register of discharge of mortgage debenture.*—When a mortgage debenture is produced by the Company to

the registrar, with a receipt for the moneys secured thereby indorsed thereon, signed and stamped, he shall make in the register of mortgage debentures an entry of the discharge thereof.

37. *Transfer of mortgage debenture.* — Every mortgage debenture may be transferred by indorsement in the Form (E.) in the schedule to this act, or to the like effect.

38. *Entry of transfers by deed of mortgage debentures to be made by Company.*—Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the Company's secretary, and thereupon the secretary shall make an entry thereof in a transfer book; and after the entry the transfer shall entitle the transferee to the full benefit of the original mortgage debenture, so far as it is then in force; and no person having made the transfer shall have power to make void, release, or discharge the mortgage debenture so transferred, or any money thereby secured; and for the entry the Company may demand not exceeding two shillings and sixpence; and, until the entry, the Company shall not be in any manner responsible to, or bound to take notice of, the transferee in respect of the mortgage debenture.

39. *Stamp acts applied to stamps under act.*—The several acts from time to time in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall apply to the stamps to be provided in pursuance of this act, and to documents on which the stamps are impressed, and to collecting and securing the sums of money denoted by stamps, and to preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if the provisions were in this act repeated and specially enacted with reference to those stamps and sums of money respectively.

40. *Further powers of investment to trustees.*—In all cases in which, by the instrument creating the trust, trustees have a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of Companies incorporated by or acting under the authority of an act of Parliament, they may invest such trust moneys on the security of mortgage debentures duly issued under and in accordance with the provisions of this act.

41. *Power to appoint receiver.*—Any person for the time being entitled to any mortgage debenture of the Company shall be empowered from time to time to enforce the payment of any arrears of interest or principal (as the case may be) due on such mortgage debenture by procuring the appointment of a receiver in the manner and subject to the conditions hereinafter mentioned.

42. *Terms on which power may be exercised.*—If within seven days after the interest accruing upon any mortgage debenture has become payable, and after demand thereof in writing made upon the Company by the person entitled thereunto, such interest be not paid, or if within three weeks after the principal money secured by any mortgage debenture has become payable, and after demand thereof in writing made as aforesaid, such principal money be not paid, the person at the time entitled to the receipt of such interest or principal respectively may apply for the appointment of a receiver, as hereinafter provided.

43. *Saving rights of mortgagees to sue.*—No such application shall in any way prejudice or affect the right of any person entitled to any such mortgage debenture to sue for any such interest or principal money, as the case may be, in any court of law or equity.

44. *Application for receiver.* — Every application for a receiver in the cases aforesaid may be made to the High Court of Chancery by petition or by summons at chambers, and on any such application the Court of Chancery may appoint a receiver to act on behalf of the applicant and the other persons entitled to the Company's mortgage debentures.

45. *Removal of receiver.*—The court may also remove the receiver, and appoint another in his stead, and so from time to time, and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit.

46. *Powers and duties of receiver.*—Subject to any such orders and directions, the receiver shall be entitled to receive or recover the whole or a competent part of the principal moneys, instalments, annuities, interest, and other moneys from time to time payable to the Company upon or in respect of their registered securities, and also any moneys standing

to the account of the Company's mortgage debentures under the provision of section 17, until the principal and interest due on all the debentures issued by the Company, together with all costs, including the reasonable and proper charges of such receiver, shall have been fully paid; and upon such appointment being made, and notice thereof to the several persons liable upon such registered securities, all such moneys from time to time payable upon or in respect of such registered securities shall be paid to and received or recovered by such receiver; and the receiver shall apply the same, as from time to time received or recovered by him, first to the payment of all such costs, and afterwards to the discharge and payment of all interest, or principal and interest, as the case may be, due upon such mortgage debentures; and after such costs, and such interest, or principal and interest, shall have been fully paid, the power of such receiver shall cease.

47. *Court may stay order for receiver upon terms.*—The court may order, as to any of the above-mentioned powers and duties, that the receiver shall not exercise the same without the sanction or further direction of the court; and the court may, at any time after an order for the appointment of a receiver has been made, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it may deem fit.

48. *Company not to issue mortgage debentures on ceasing to be entitled to avail itself of act.*—In case any Company shall cease to be entitled to issue mortgage debentures under this act, such Company shall nevertheless have the powers and be subject to the provisions of this act with respect to all mortgage debentures then issued and outstanding; but no mortgage debentures shall be issued or renewed by such Company upon any ground or pretence whatever after it shall have ceased to be so entitled.

49. *Penalties in such event.*—In case any Company which shall not at the time being be entitled to avail itself of the provisions of this act shall issue mortgage debentures under, or purporting to be under, the provisions of this act, or in case any Company entitled to avail itself of the provisions of this act shall at any time issue mortgage debentures for an aggregate principal sum exceeding the limit to which at the time being they are entitled to issue, any person who

shall knowingly or wilfully be concerned in such issue shall in every such case forfeit the sum of five hundred pounds.

50. *How penalties may be recovered.*—Every penalty hereinbefore provided may be sued for and recovered by any person whosoever who will sue for the same by action in any of the Superior Courts of law in England or Ireland or Scotland, according as the offence has been committed in either of those parts of the United Kingdom, together with full costs of suit.

51. *Registrar, &c., not personally liable for executing act.*—No person, being the registrar, assistant registrar, or other officer or servant of the Office of Land Registry, shall be liable to any action, suit, or other proceeding, or any claim or demand, by reason of anything done *bonâ fide* by him in the execution of this act.

52. *Not exempt from Joint-Stock Companies Acts.*—This act shall not exempt the Company from the provisions of any act relating to joint-stock Companies, and applicable to the Company.

53. *Interpretation of terms.*—In the construction of this act all words meaning or applying to individuals only shall apply, *mutatis mutandis*, to corporations also.

The SCHEDULE referred to in the foregoing Act.

FORM (A.)

FORM OF RETURN TO BE MADE BY THE COMPANY ON APPLICATION TO REGISTRAR TO REGISTER SECURITIES.

Date of Company's mortgage or other security, and distinguishing number of letter.	Nature of security, whether mortgage, grant of annuity, rent-charge, or other security.	The amount of principal money secured, or, if rent-charge or annuity, the amount and duration thereof, and the annual or other periodical payment to be made on account thereof.	Tenure, whether freshold, copyhold, or leasshold.	If the Company's charge is upon any of the securities comprised in section 5(*a*), set out the extent and situation of the property on which the mortgage or other security is charged, if land, state the acreage, parish, and county; if houses, state the town, street, and No., if any, in addition to parish and county.	Nature of the mortgagors' or grantors' interest therein.	The nature and amount of the prior charges thereon (if any); if more than one charge, set out each charge separately.	If the Company's charge is upon any of the securities comprised in section 5 (*b* and *c*), set out the nature thereof, the total amount of the principal money originally advanced by the Company, and the amount unpaid at the date hereof, and the authority, statutable or other, under which the same is issued.

We hereby certify that the above return is correct.

A. B.
C. D.

FORM (B.)

Form of Surveyor's or Valuer's Declaration.

[*Here insert a copy of the return to be made by the Company on application to register securities, distinguishing each security by a separate letter or number.*]

I of do solemnly and sincerely declare, that the information above contained with respect to the security numbered or lettered is, to the best of my information and belief, correct, and that the value of the property above described (and, *if the borrower's interest is of a limited nature*, the value of the borrower's estate and interest or the property above described,) exceeds the amount of £ , the advance made by the Company in respect thereof (if there are prior charges, and of the prior charges thereon,) to the extent of one-third at least of such value.

[*A separate declaration may be made in respect of each security, and where the mortgage or charge is secured exclusively upon any of the securities comprised in sect.* 5 (b *and* c), *omit from the word* "declare" *to the end, and insert* "to the best of my information and belief the security above described, and numbered , is now of the value of £ ."]

FORM (C.)

Form of Quarterly Return.

"*Mortgage Debenture Act*, 1865."

The first quarterly return of the Company, with reference to the 30th day of December, 1865.

The registered securities of the Company.

		£
1. Aggregate securities under clause 5—*a*		150,000
2. Aggregate securities under clause 5—*b*		20,000
3. Aggregate securities under clause 5—*c*		10,000
		£180,000
4. Other investments (to be specifically enumerated) ...		16,500
5. 40,000 shares of £50 each held by registered holders	£2,000,000	
Paid up thereon	200,000	
Remaining unpaid thereon		£1,800,000

LIABILITIES.

Mortgage debenture issued and in force.

No.	Date.	Yearly rate per cent. of interest.	Time for repayment of principal.	Principal sum secured.
				£
1	August 1, 1865	Four	August 1, 1869	10,000
2	August 1, 1865	Four	August 1, 1869	5,000
3	August 10, 1865	Three and three-quarters	August 10, 1871	20,000
		and so on.		
			Total ... £	

We hereby certify that the above return is correct.

A. B.
C. D.

FORM (D.)

FORM OF MORTGAGE DEBENTURE.

The Company.

Mortgage Debenture, No.

By virtue of "The Mortgage Debenture Act, 1865," we, the Company, in consideration of £ paid to us by A. B. of , do hereby charge all the registered securities of the Company with the payment to the said A. B., his executors, administrators, and assigns, of the sum of £ , and interest thereon at the rate of , which sum of £ is to be paid and payable to the said A. B., his executors, administrators, and assigns, at the [place], on the day of with interest on the same at the rate of per cent. per annum, payable half-yearly, at said place, on every day of and day of and we hereby undertake to pay said sum of £ and interest at the rate aforesaid, as above mentioned.

Given under our common seal, this day of

A. B., Director.
C. D., Director.

Countersigned, G. F., Secretary.

Registered

FORM (E.)

FORM OF TRANSFER OF MORTGAGE DEBENTURE.

I, A. B. of , in consideration of £ [state true consideration] hereby transfer to C. D. of his executors, administrators, and assigns, the within mortgage debenture.

(Signed) A. B.

SALE OF SHARES IN JOINT-STOCK BANKING COMPANIES ACT

(30 Vict. cap. 29).

An Act to amend the Law in respect of the Sale and Purchase of Shares in Joint-Stock Banking Companies. —[17*th June* 1867.]

Whereas it is expedient to make provision for the prevention of contracts for the sale and purchase of shares and stock in joint-stock banking Companies of which the sellers are not possessed or over which they have no control:

May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

1. *Contracts for sale, &c., of shares to be void unless the numbers by which such shares are distinguished are set forth in contract.*—That all contracts, agreements, and tokens of sale and purchase which shall, from and after the first day of July, one thousand eight hundred and sixty-seven, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint-stock banking Company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking Company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall

at the time of making such contract stand as the registered proprietor thereof in the books of such banking Company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanor, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

2. *Registered shareholders may see lists.*—Joint-stock banking Companies shall be bound to show their list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

3. *Extent of act limited.*—This act shall not extend to shares or stock in the Bank of England or the Bank of Ireland.

THE ABANDONMENT OF RAILWAYS ACT, 1850

(13 & 14 Vict. cap. 83).

An Act to facilitate the Abandonment of Railways, and the Dissolution of Railway Companies, in certain Cases.—[14*th August* 1850.]

[Note.—Railway Companies incorporated by Act of Parliament are specially excepted by sect. 199 of "The Companies Act, 1862" (see p. 271, *ante*), from the winding-up provisions of that act, and until recently such Companies could not, under any circumstances, be wound-up under it. The present act enabled railway Companies formed before 1850 to be wound-up under "The Joint-Stock Companies Winding-up Act, 1848;" that act was, however, repealed by "The Companies Act, 1862;" and, until "The Railway Companies Act, 1867," there was no provision on the subject. By the latter act, the material sections of which on this point are given after, two important alterations are made in the law—first, the present act is extended to all Companies authorised to make railways by act of Parliament passed before the session of 1867; and, secondly, Companies which have abandoned their undertaking in accordance with "The Abandonment of Railways Act, 1850," are empowered to be wound-up under "The Companies Act, 1862." The facilities thus afforded for abandoning railways have already been so largely used that it is thought right to insert the present act, under which proceeding must be taken before a railway Company can be wound-up.]

1. *Railway company may make application to Commissioners of Railways to be allowed to abandon their undertaking.*—Whereas divers joint-stock Companies have been incorporated by act of Parliament for making railways, and it has been found that such railways, or certain parts thereof, cannot be made or carried on with advantage either to the promoters thereof or to the public, and it is expedient therefore that facilities should be given for the abandonment of such railways or parts of railways, and for the dissolution of such Companies, or some of them, and winding-up the concerns thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if any Company authorised by act of Parliament heretofore passed to make a railway desire that the making and carrying on of such railway or some part thereof, whether commenced or not, be abandoned, such Company may,(*a*)

by the authority and with the consent of the holders of three-fifths of the shares or stock of such Company represented in manner hereinafter mentioned at a general meeting of shareholders to be convened in manner hereinafter mentioned, make application in writing (*b*) to the Commissioners of Railways setting forth the particulars of the railway or portion of the railway desired to be abandoned by them, and the grounds upon which such application is made.

(*a*) *Such Company may, &c.*]—See sect. 32 of "The Railway Companies Act, 1867" (30 & 31 Vict. c. 127), *post*, as to the circumstances under which certain persons may now apply under this act.

(*b*) *Application in writing, &c.*]—The application is now to be made to the Board of Trade; see 14 & 15 Vict. c. 64. No particular form having been adopted, it is only necessary that the application should show compliance with the requisitions of the act, and state clearly the object of it, and the grounds on which it is made. It should be addressed to "The Secretary, Railway Department, Board of Trade." The following will probably be found a convenient form in which to make the application on the part of a Company:—

The memorial of the under their common seal, showeth:

That your memorialists were incorporated by the Railway Act, 18 , for the purpose of making and maintaining the railway [*or* railways *or* works] therein described as :

That it being desired that the said railway [*or* portion of railway *or* railways hereinbefore described, as :] should be abandoned by the said Company, the directors of the said Company, in pursuance of "The Abandonment of Railways Act, 1850," called a meeting of the shareholders of the said Company, to be held at on the day of last, at o'clock in the for the purpose of ascertaining whether the requisite proportion of shareholders of the Company assent to or dissent from an application being made to the Board of Trade for a warrant authorising the abandonment of the railway [*or* portion of railway *or* railways] hereinbefore mentioned

That such meeting was duly called by an advertisement in the newspaper of , giving fourteen days [ten days in the case of a railway in Scotland] public notice of the meeting in the manner required for advertising the extraordinary meetings of the Company:

That a circular, in the form specified in the schedule to "The Abandonment of Railways Act, 1850," was sent by post addressed to each of the registered shareholders of the railway Company, according to his registered or known address, seven clear days at least before the holding of such meeting:

That such meeting was accordingly held as advertised:

That was chairman:

That three scrutineers were duly elected, and made their report; and

That the chairman announced the report to the meeting, and stated that the application was duly assented to, in the manner required by the said act:

That copies of the special act, newspaper containing advertisement, circular to shareholders, scrutineers' report, and certificate of the chairman of the meeting, accompany this memorial.

Your memorialists accordingly beg to make application for a warrant authorising the abandonment of the railway [*or* portion of railway *or* railways] hereinbefore described, and to submit the following as the grounds upon which such application is made:

Your memorialists therefore pray that the Board of Trade will be pleased to grant their warrant, authorising the abandonment of the railway [*or* portion of railway *or* railways] hereinbefore described.

Given under the common seal of the said this day of 18 .

The documents mentioned in the form should accompany the memorial. Where the application is made by any of the persons now authorised to make it by sect. 32 of "The Railway Companies Act, 1867" (30 & 31 Vict. c. 127), *post*, the form must, of course, be modified accordingly.

2. *Directors may call meeting to consider such application.*—And be it enacted, that it shall be lawful for the directors of any such railway company at any time to call a meeting of the shareholders thereof for the purpose of determining whether such application shall be made to the Commissioners of Railways, and so from time to time as they shall see fit.

3. *Shareholders may require directors to call meeting.*—And be it enacted, that it shall be lawful for any number of shareholders of any such Company, not being less than five, and holding in the aggregate not less than one-twentieth of the capital or stock of the Company, consisting of shares or stock whereon all calls for the time being have been paid up, but exclusive of any shares or stock held by or in the names of the directors of the Company or any of them, or by or in the name of any person in trust for the directors or any of them, or for the Company, and which shareholders shall have paid all the calls then due on the shares held by them, by writing under their hands to require the directors of such Company to call a meeting for the purpose aforesaid; and upon the receipt of any such requisition such directors shall forthwith proceed to call a meeting of the shareholders of such Company on a day to be named by them, not being less than fourteen nor more than twenty-eight days after the receipt of such requisition: Provided always, on the default of the directors to call and advertise such meeting within fourteen days after the receipt of the requisition, it shall be lawful for the requisitionists to call such meeting themselves, at a time and place to be appointed by them, of which fourteen days' notice shall be given by them by advertisement as hereinafter provided: Provided also, that when any meeting of any such Company shall have been called pursuant to any such

requisition as aforesaid, the directors of such Company shall not be required to call any further meeting of such Company upon any further requisition for the like object until twelve months shall have elapsed since the holding of such previous meeting.

4. *After receipt of requisition, directors not to make any payments, except under existing liabilities, nor to enter into new contracts, nor to make new calls.*—And be it enacted, that after any such meeting has been called by the directors, or after the receipt of any such requisition as aforesaid, it shall not be lawful for the directors to make any payments out of the moneys of the Company, for the purposes of the railway proposed to be abandoned, except in discharge of *bonâ fide* debts or liabilities, or in performance of contracts or engagements previously entered into, and in payment of the expenses of calling and holding such meeting, nor to enter into any contracts or engagements on behalf of the Company with respect to the railway so proposed to be abandoned, nor to make any calls, nor to register the transfer of any shares, until the meeting called as aforesaid shall have determined whether such application shall be made.

5. *Mode of calling meeting, and signifying the consent of the shareholders to the application.*—And be it enacted, that the calling of any such meeting shall be by public advertisement in the manner required or usually adopted for advertising the extraordinary general meetings of such Company, and where such meeting is called by the directors of the Company a circular letter shall be sent by the post addressed to each of the registered shareholders of such Company, according to his registered address or other known address, seven clear days at least before the holding of such meeting, and stating that a general meeting of the shareholders of such Company will be held at a time and place mentioned in such circular, for the purpose of determining whether application shall be made to the Commissioners of Railways that such railway or the part thereof specified in such notice may be abandoned, and requesting such shareholder to signify his assent to or dissent therefrom, which may be according to a form to be contained in such circular letter, which form shall be to the effect set forth in the schedule hereto, and such circular letter shall request such shareholder either to return such form, signed by him, in a letter addressed to the secretary of such Company, or to attend such general meeting as aforesaid, and deliver the

same, so signed by him, to the chairman thereof; and in the case of every such meeting, whether called by the directors or by such requisitionists as aforesaid, the shareholders may signify their assent to or dissent from the proposed application, either by attending such meeting in person or by letter addressed to the secretary of the Company, stating the assent or dissent of such shareholders, in a form which shall be to the effect of the form set forth in the schedule hereto, and signed by such shareholders respectively.

6. *The number of the shareholders assenting or dissenting to be ascertained by scrutineers, and reported to the chairman.*—And be it enacted, that at the meeting so to be called as aforesaid the scrutineers to be appointed as hereinafter mentioned shall cast up the amount of shares held by shareholders assenting to the making of such application, and the amount of shares held by shareholders dissenting therefrom, whether such assent or dissent have been signified by the shareholder sending to the secretary of the Company such form as aforesaid, signed by him, or by such shareholder attending such meeting, and delivering in the same to the chairman thereof, and such scrutineers shall report to the chairman the amount of shares of the shareholders assenting to such application, and the amount of the shares of those dissenting therefrom, and the said chairman shall thereupon publicly announce to the meeting the said amounts respectively, and shall state whether or not the holders of three-fifths of the whole of such shares represented in manner aforesaid at the meeting consent to such application: Provided always, that in computing the amount of shares of the shareholders assenting or dissenting as aforesaid no share shall be taken into account, the holder whereof shall not have been duly registered, or who shall not have paid all the calls then due by him upon all the shares held by him, unless such calls shall have been made within three months prior to the holding of such meeting, or if such meeting be held pursuant to a requisition of shareholders as hereinbefore provided, then three months prior to the day on which such requisition was presented to the directors.

7. *Chairman of the meeting.*—And be it enacted, that the chairman of the directors of such Company, if present, or in his absence the deputy-chairman, if any, of such directors, shall be the chairman of such meeting as aforesaid, or if neither such chairman nor deputy-chairman of the directors

be present, any shareholder chosen for that purpose by a majority of the shareholders present at the meeting shall be the chairman thereof.

8. *Meeting to elect scrutineers.*—And be it enacted, that at every such meeting the shareholders present thereat shall elect three shareholders of the Company to be scrutineers for the purposes aforesaid, and in electing such scrutineers each shareholder shall have one vote only, and shall vote for one scrutineer only; and the decision of such scrutineers, or of any two of them, upon any of the matters hereby intrusted to them, shall be final in all respects.

9. *Adjournment of meeting on application of scrutineers.*—And be it enacted, that for the purpose of receiving the report of the said scrutineers the chairman of such meeting may, if he think fit, on the application of any one of such scrutineers, and he shall, if required by more than one of such scrutineers, adjourn such meeting to some time to be appointed by him, not less than one clear day nor more than seven clear days from the day of holding such meeting.

10. *Certificate of the chairman to be evidence.*—And be it enacted, that a certificate under the hand of the chairman of the meeting, stating that such meeting as aforesaid has been duly held, and such consent given as aforesaid in cases where the same is given, shall within one week after the day of holding such meeting be deposited in the office of the said Commissioners of Railways.

11. *Shareholders desiring abandonment, and complaining that the sense of the Company has not been fairly ascertained, may apply to the commissioners.*—Provided always, and be it enacted, that if it appear to any of the shareholders of any such Company who shall have signed any such requisition, or been present at any such meeting as aforesaid at which the proposal to apply to the said commissioners to authorise the abandonment of the whole or part of a railway shall have been negatived or alleged to be negatived, either that such meeting was not duly called, or that the sense thereof was not duly taken according to the true intent and meaning of this act, and that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application would have been given, it shall be lawful for any such shareholders, not being less in number than

five, and holding in the aggregate not less than one-twentieth of the capital or stock of the Company, consisting of shares or stock whereon all calls for the time being have been paid up, and which shareholders shall have paid all the calls then due on the shares held by them, to apply to the said commissioners, setting forth in writing the grounds on which they complain of the decision alleged to have been come to at such meeting as aforesaid, and praying that a further meeting may be called, and if it appear to the said commissioners (after hearing the parties complained of, if they desire to be heard), that there is good reason to believe that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application to the said commissioners would have been given, the said commissioners shall certify their judgment to that effect, and shall direct a further meeting to be called by the directors of such Company at the time and place to be appointed by the said commissioners, and the said directors shall call such meeting accordingly, or in default thereof it shall be lawful for the shareholders who complained to the said commissioners of the proceedings of the former meeting to call such meeting, and all the provisions of this act shall apply to any further meeting so directed to be called in like manner as to any original meeting hereinbefore authorised or required to be called.

12. *If meeting determine that application shall be made, directors not to proceed meanwhile.*—And be it enacted, that if at any such meeting any railway Company shall determine, as hereinbefore mentioned, that such application as aforesaid shall be made, or if the said commissioners shall certify as aforesaid their judgment, that if such meeting had been duly called and the sense thereof duly taken, the consent of such meeting to the proposed application to the said commissioners would have been given, then, as from the date of the resolution so come to at such meeting, or the date of the said certificate, as the case may be, the directors of such Company shall not have power to proceed any further with the making of the railway, or the part thereof so proposed to be abandoned, until the decision of the Commissioners of Railways with respect to such application be made, and then only in accordance with such decision.

13. *Commissioners of railways to direct advertisements of application.*—And be it enacted, that if it appear to the said

commissioners that there are sufficient grounds for entertaining such application, the said commissioners shall require and direct the Company making the same to give notice of such application having been made, by advertisement inserted, in a form to be approved of(*a*) by the said commissioners, once in the *London, Edinburgh,* or *Dublin Gazette,* according as the railway or part of the railway proposed to be abandoned is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part proposed to be abandoned of such railway is situated, and affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any part of such railway where the whole is proposed to be abandoned, or in which any part proposed to be abandoned, is situate, and in Ireland such notice shall also be affixed to the Roman Catholic Chapel, and where there shall be no such church or chapel on some public or conspicuous place of such parish; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed abandonment, and who desires to object thereto, may bring such objection before the commissioners.

(*a*) *In a form to be approved of, &c.*]—The form of the advertisement must, of course, be submitted in each case to the Board of Trade before its insertion, in order to be approved of by them.

14. *Commissioners to have power to inspect the Company's books and other documents, and to send an officer for local inspection.*—And be it enacted, that, for the purpose of ascertaining the state and condition of the Company making any such application, and of inquiring into the expediency of the proposed abandonment of railway, and of determining the terms and conditions on which the same may be authorised by them, it shall be lawful for the Commissioners of Railways, by themselves or by any officer appointed and specially empowered by them for that purpose, to inspect the books of accounts, minutes of proceedings, or any other books, papers, or documents in the possession or control of such Company, and also, if they see fit so to do, to send, at the expense of such railway Company, or at the expense of any person who applies to them for that purpose, an officer to be appointed by them to inspect the railway or proposed railway or work so proposed to be abandoned, and to collect evidence on the spot relative to such abandonment; and if

any such Company, or any of their officers or servants, shall refuse such inspection by the said commissioners, or any officer appointed and specially empowered by them for that purpose, or refuse or wilfully neglect to produce to the said commissioners or any such officer, on demand, any books, papers, or documents in the possession or control of such Company, every such Company shall for every such refusal or neglect, forfeit to Her Majesty the sum of twenty pounds, and a further sum of five pounds for every day during which such refusal or wilful neglect shall be continued.

15. *Commissioners of Railways may by warrant authorise the abandonment of the railway or part of railway described in the warrant.*—And be it enacted, that upon proof to the satisfaction of(*a*) the said commissioners that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the said commissioners, and after considering all the objections, if any, brought before them, the said commissioners may, if they think fit, and upon such terms and conditions as they think fit, by warrant under their seal, and signed by two or more of the said commissioners, authorise the abandonment of(*b*) the railway or portion of railway described in such warrant.

(*a*) *Upon proof to the satisfaction of, &c.*]—Copies of the newspapers containing the required advertisements must be sent in to the Board of Trade, and also a declaration by the person who affixed the notices required by sect. 13, *supra*, stating the time when and the places where they were so affixed.

(*b*) *Authorise the abandonment, &c.*]—See clause 3 of sect. 31 of "The Railway Companies Act, 1867" (30 & 31 Vict. c. 127), *post*, as to the conditions the Board of Trade may require.

In one case that came before them, the Board of Trade granted their warrant on condition that an objecting landholder, who was led by the assurances of the Company to incur certain expenses with regard to his lands, should be compensated.

16. *In considering objections of shareholders to partial abandonment, commissioners to have regard to local circumstances—Power to reduce or cancel the shares of the objectors in certain cases.*—Provided always, and be it enacted, that in considering the objections which may be made by any of the shareholders of any railway company to the proposed abandonment of a part only of the railway of such company, and in determining the terms and conditions on which the said commissioners may think fit to authorise any such partial abandonment, the said commissioners shall have

regard to the local situation of the lands and residences of the shareholders so objecting with reference to the portion of railway proposed to be abandoned; and in the case of any such shareholders being original subscribers to the undertaking, and not being solicitors, agents, or engineers employed in promoting the same, and whose places of residence or lands are adjoining or near the line of the portion of railway so proposed to be abandoned, it shall be lawful for the said commissioners, if they think fit so to do, in any direction which (under the provision hereinafter contained) they may give for reducing the capital of the company authorised to construct such railway, to provide, at the request of any such last-mentioned shareholders, that the nominal amount of the shares held by them in such Company may be reduced to the amount then already paid up by them respectively, or to such other extent as the said commissioners may think fit to order in that behalf, or the said commissioners may, at the like request, direct any such shares to be cancelled, and a part of the moneys that may have been paid up in respect of such shares, bearing such proportion to the whole as the said commissioners having regard to all the circumstances of the case shall think fit to determine, to be repaid to such shareholders.

17. *Abandonment of railway to be advertised, and demands on the Company for compensation to be sent in.*—And be it enacted, that within one month after the day on which any snch warrant as aforesaid is granted by the said commissioners the railway Company to which the same applies shall cause notice thereof (*a*) to be inserted in the *London, Edinburgh,* or *Dublin Gazette,* according as the railway or part of railway mentioned therein is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any such part of such railway is situate, and in Ireland such notice shall also be affixed to the Roman Catholic chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said Company for compensation or otherwise, by reason of the abandonment of railway authorised by such warrant, to transmit the statement of such

claims or demands to the secretary of such Company, at the office or usual place of business of the same Company, within four months from the date of such warrant.

(*a*) *Notice thereof, &c.*]—The notice should state that a warrant (giving the date of it) has been granted, and that the railway has been abandoned, and that claims against the Company are to be sent in within four calendar months from the date of the warrant.

18. *Commissioners of Railways to certify the due publication of the notice of the warrant.*—And be it enacted, that, upon proof to the satisfaction of (*a*) the said commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said commissioners shall certify the same accordingly; and such certificate shall be received in all courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

(*a*) *Proof to the satisfaction of, &c.*]—Copies of the newspapers containing the required advertisements must be sent in to the Board of Trade, and also a declaration by the person who affixed the notices required by the last section stating the time when and the places where they were so affixed.

19. *After the granting of warrant the Company to be released from liability to make the railway.*—And be it enacted, that after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the Company shall (subject to the provisions hereinafter contained) be released from all liability to make, maintain, or work the railway mentioned in such warrant, or the part thereof thereby authorised to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by or on behalf of the Company, or to complete any contract for or concerning the making, maintaining, or working of the railway so to be abandoned, or any other contract relating to the railway or part of railway so authorised to be abandoned which by reason of such abandonment cannot be performed: Provided always, that nothing in this act contained shall extend to release the Company from any liability to complete the purchase of any land for the purchase of which any contract may have been entered into by or on behalf of the Company, and which contract may have been in part performed, or by virtue or in pursuance of which a specified sum or price as the consideration for the purchase of the lands thereby agreed to be sold to or

taken by the Company shall have been fixed or ascertained previously to the passing of this act, notwithstanding the time for the completion of the purchase named in such contract shall have been subsequently extended by agreement or arrangement with the Company.

20. *Compensation to be made where contracts have been entered into or notice given.*—Provided always, and be it enacted, that in every case in which before the granting of any such warrant any notice hath been given or contract entered into by or on behalf of the Company named therein for purchasing any lands which such Company were by the acts relating thereto empowered to purchase for the purpose of constructing the railway or portion of railway so authorised to be abandoned, and from which contract such Company would be relieved under the provisions hereinbefore contained, or where any contract hath been entered into for or concerning the constructing, maintaining, or working of the railway or part of railway so authorised to be abandoned, or any other contract relating thereto, which by reason of such abandonment cannot be performed, the Company shall make to the owners or occupiers of and other parties interested in such lands, or being parties to such contracts as aforesaid, compensation, to be determined by arbitration as hereinafter mentioned, for all injury or damage, if any, sustained by such owners, occupiers, and other parties by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

21. *Compensation to adjoining landowners in lieu of accommodation works.*—And be it enacted, that where any railway or part of a railway so authorised to be abandoned shall have been then made or commenced, such Company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorised to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, watercourses, bridges, and such other works, for the accommodation of lands adjoining the railway, as such Company would have been required to make if such railway had not been allowed to be abandoned.

22. *Where roads have been carried across abandoned line of railway by means of a bridge or tunnel, Company to make*

compensation, in lieu of keeping bridges, &c. in repair, except where the road is restored to its former state.—And be it enacted, that where the line of any railway so authorised to be abandoned shall have been wholly or partially laid out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the Company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except where such bridge or tunnel shall, with the permission of the said commissioners, be by such Company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such Company and the owner or persons having the management of such road) of the Commissioners of Railways, such Company shall pay to the owner of such road, if it be a private road, or to the trustees, surveyors of highways, or other persons having the management of such road, if it be a turnpike or other public road, a sum of money, to be determined by arbitration as after mentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same, in repair.

23. *Compensation to trustees and overseers of public roads, how to be applied.*—And be it enacted, that every sum so to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in Consolidated Bank Annuities or other public securities, and the dividends or income thereof shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the Justices in Quarter Sessions having jurisdiction where such bridge or tunnel is situate shall order.

24. *Application of moneys paid.*—And be it enacted, that every sum so to be paid as last aforesaid in Scotland to such trustees or other persons as aforesaid shall be by them paid into bank, and the interest to arise thereon shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid,

in such manner as the sheriff of the county in which such bridge or tunnel is situate, in case of any difficulty arising, shall direct.

25. *Amount of compensation to be settled by arbitration, pursuant to* 8 *&* 9 *Vict. c.* 20 *and* 8 *&* 9 *Vict. c.* 33, *claims for compensation to be made within six months after publication of warrant for abandonment.*—And be it enacted, that the amount of the compensation so to be made in the several cases aforesaid shall be determined, in case of difference, by arbitration, in the manner provided by "The Railways Clauses Consolidation Act, 1845," or "The Railways Clauses Consolidation Act (Scotland), 1845," as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of such Company in any of the cases aforesaid, unless the claim for such compensation shall have been made within six months after the publication in the Gazette of the notice of the warrant for such abandonment as hereinbefore provided.

26. *Company to be still liable for damage occasioned by their entry on lands for taking levels, &c., pursuant to* 8 *&* 9 *Vict. c.* 18, *or* 8 *&* 9 *Vict. c.* 19.—Provided also, and be it enacted, that the authority so as aforesaid given for abandoning the making of any such railway or part of a railway shall not prejudice or affect the right of the owner or occupier(*a*) of any lands to receive from such Company compensation for any damage that may have been occasioned by the entry of such company upon such lands, for the purpose of surveying and taking levels, and of probing or boring to ascertain the nature of the soil, or of setting out the line of the railway, pursuant to the provisions for that purpose in "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Act (Scotland), 1845," contained.

(*a*) *The right of the owner or occupier, &c.*]—See, also, sect. 33 of "The Railway Companies Act, 1867," *post.*

27. *Lands purchased by the railway Company to be sold*

within a limited time.—And be it enacted, that all the lands acquired by such Company for the purposes of the railway or part of railway so authorised to be abandoned shall be sold by such Company within the time limited or prescribed for that purpose in the warrant authorising the abandonment of such railway, and if no time be therein prescribed for that purpose, then within two years from the date of such warrant, in the manner prescribed by the said Lands Clauses Consolidation Acts with respect to the sale of superfluous lands; and for that purpose all the clauses of the said last-mentioned acts with respect to the lands acquired by the promoters of the undertaking under the provisions of their special act, but which are not required for the purposes thereof, shall be deemed to be incorporated with this act: Provided always, that the offer to be made by the railway Company pursuant to the said acts to sell such lands to the person entitled to the lands from which the same were severed shall be made at a price or sum not greater than the price or sum at which such lands were purchased by such Company.

28. *Where part of a railway is authorised to be abandoned, the commissioners may require the capital to be reduced.*—And be it enacted, that when the said Commissioners of Railways, by any such warrant as aforesaid, authorise the abandonment of a part only of the railway of any railway Company, they may, if they think fit, require that the capital authorised to be raised by such Company in respect of such railway shall be reduced to such extent and in such manner as the said commissioners think fit, and so that such reduction do not bear a greater proportion to the whole capital so authorised to be raised than the cost of the part of the railway so authorised to be abandoned would have borne to the cost of the whole railway; and they may also, if they think fit, in like manner reduce the amount which such Company are authorised to borrow on mortgage or bond, and every such reduction shall be expressed in the said warrant; and in every such case the capital of such Company, and their power of borrowing money, shall be reduced and limited in conformity with the directions for that purpose contained in such warrant; and such Company shall have all the same powers for enforcing the payment of calls in respect of the shares in the capital when reduced in the manner required by the said commissioners, and for enforcing the forfeiture of any such shares in default of payment of such calls, as

such Company would have had in respect of the original capital of such Company if this act had not been passed: Provided always, that nothing herein contained shall authorise the said Company to reduce or interfere with any amount of capital paid up or called for before the eleventh day of February, one thousand eight hundred and fifty, and entitled to any preferential or guaranteed dividend or interest.

29. *After warrant for abandonment of the whole railway the powers of the Company are to cease except for winding-up.*—And be it enacted, that after the granting of any such warrant as aforesaid for the abandonment of the whole railway of any railway Company the powers of such Company for the construction, maintenance, and management of such railway shall cease, and such Company shall continue to exist only for the purpose of winding-up their affairs,(*a*) and they shall accordingly, subject to the provisions herein contained with respect to the sale of lands acquired by such Company for the purposes of their railway, proceed with all convenient speed to collect and to convert into money all their property and effects, and shall in the first place pay and satisfy all their debts and liabilities, and after full payment and satisfaction thereof shall distribute the surplus funds among the shareholders of the Company in proportion to their shares and interests therein, and for the purposes aforesaid all the powers of such Company shall continue in full force and effect; and when and so soon as the same shall have been fully accomplished such Company shall be dissolved, and cease to exist.

(*a*) The remaining part of this section, together with the four following sections, have been repealed by "The Abandonment of Railways Act, 1869," s. 10, *post*, which act, however, makes provision for the winding-up of railway Companies.

30. *Provisions of* 11 *&* 12 *Vict. c.* 45, *and* 12 *&* 13 *Vict. c.* 108, *to apply to cases where order of winding-up was made prior to passing of said acts.*—And be it enacted, that, notwithstanding the provision in "The Joint-Stock Companies Winding-up Amendment Act, 1849," excepting railway Companies incorporated by act of Parliament from the application of "The Joint-Stock Companies Winding-up Act, 1848," the said two several acts shall nevertheless apply to any railway Company incorporated by act of Parliament in respect of which an order may have been made by the Court of Chancery for winding-up the affairs of such

Company previous to the passing of the said "Joint-Stock Companies Winding-up Amendment Act, 1849," and the proceedings for winding-up the same shall proceed and be carried on under the said "Joint-Stock Companies Winding-up Act, 1848," and the said "Joint-Stock Companies Winding-up Amendment Act, 1849," or either of them.

31. *When warrant has been granted for abandoning the whole railway, shareholders may petition for winding-up, under the* 11 *&* 12 *Vict. c.* 45, *notwithstanding anything in* 12 *&* 13 *Vict. c.* 108.—And be it enacted, that where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway Company in England or Ireland, any shareholder of such Company (*a*) may present a petition under "The Joint-Stock Companies Winding-up Act, 1848,"(*b*) or any act for the amendment of such act, for the winding-up of the affairs of such Company under the said act, and for that purpose the railway Company whose railway is so authorised to be abandoned shall, if the court shall think fit so to order (notwithstanding anything to the contrary thereof in the said "Joint-Stock Companies Winding-up Act," or in "The Joint-Stock Companies Winding-up Amendment Act, 1849"), be deemed to be a Company to which the said act applies.

(*a*) *Any shareholder of such Company, &c.*]—By sect. 4 of "The Abandonment of Railways Act, 1869," *post* (which repeals this section), a railway Company whose railway is authorised to be abandoned shall be deemed to be an unregistered Company, which may be wound-up under "The Companies Acts, 1862 and 1867," and others besides shareholders may petition for such winding-up.

(*b*) "*The Joint-Stock Companies Winding-up Act*, 1848."]—The only case decided with regard to a railway Company wound-up under this act was *Mackenzie* v. *The Sligo and Shannon Railway Company* (18 Q. B. 862).

32. *Court of Session, upon petition, may sequestrate any railway Company for the abandonment of which a warrant has been granted.*—And be it enacted, that where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway Company in Scotland, any shareholder of such Company may present a petition to the Court of Session, praying the said court to sequestrate such Company, and it shall thereupon be lawful for the said court to issue a deliverance awarding sequestration of such Company, and to appoint a factor, who shall take possession of and recover the estate of such Company,

and realise and manage the same, for the purposes of this act, and for winding-up and distributing the same with due regard to the rights and interests of the creditors and shareholders, and of all others concerned therein.

33. *Court of Session to establish rules for adjustment of claims*—2 & 3 *Vict. c.* 41.—And be it enacted, that it shall be competent to the said court to establish, by acts of sederunt to be passed by them, all such rules and regulations as may be necessary in relation to the summary statement, discussion, and adjudication of all claims at the instance of creditors, shareholders, and other parties against such Company, and by such rules and regulations to apply, as far as may be practicable and expedient, towards the purposes of this act, the provisions of an act passed in the session of Parliament holden in the second and third years of the reign of Her present Majesty, intituled *An Act for regulating the Sequestration of the Estates of Bankrupts in Scotland*; and it shall be competent to the said court so also to establish all such other rules and regulations as may be necessary for carrying fully into effect the purposes of this act.

34. *In case of petition for winding-up, landowners are to be deemed creditors in respect of the compensation given by this act.*—And be it enacted, that in the event of the affairs of any such Company being wound-up under any such petition, the compensation hereinbefore directed to be given to the owners and occupiers of lands and others in respect of the damage sustained by them by reason of such abandonment in the cases hereinbefore mentioned, or by reason of the non-completion of any such contract as aforesaid, or otherwise, shall be deemed a demand claimed from, and when ascertained in the manner provided by this act a debt due from, such Company, and the party by whom such compensation is claimed shall be deemed a "creditor," in England or Ireland, within the provisions of the said Joint-Stock Companies Winding-up Act, or, in Scotland, within the provisions of the said recited act of the second and third years of the reign of Her present Majesty; and in case any lands purchased by such railway Company shall be sold by the official manager under the said act, they shall be sold in the manner and subject to the provisions contained in this act.

35. *Act not to affect actions or suits commenced before the 11th of February*, 1850.—Provided always, and be it enacted,

that this act, or any proceeding thereunder, shall not prejudice or affect any action or suit or other proceeding at law or in equity commenced before the eleventh day of February, one thousand eight hundred and fifty,(*a*) or any action or suit brought in connection with and during the dependence of and involving the same matter with such action or suit, nor any action, suit, or other proceeding against a Company which shall not have obtained a warrant authorising the abandonment of the railway or part of a railway in respect of which such action, suit, or other proceeding shall be instituted, unless such Company shall, within three days after notice for that purpose from the party suing them, give such party notice of their intention to apply for such warrant, and shall obtain the same, and serve notice thereof on such party within three calendar months thereafter, but all such actions and suits and other proceedings shall be proceeded with, and judgments recovered, and rules, orders, and decrees made therein shall be enforced, as if this act had not been passed, save only that the same, after notice given by the Company of their intention to abandon as aforesaid, shall be suspended for three calendar months, if the warrant be refused, or be not obtained within that time.

(*a*) *Eleventh day of February, one thousand eight hundred and fifty.*]—By the second clause of sect. 31 of "The Railway Companies Act, 1867," *post*, the 21st of May, 1867, is now substituted for this date.

36. *Nothing herein to authorise abandonment of any railway agreed to be constructed, without consent.*—Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to authorise the abandonment by any Company of any railway or portion of a railway, or other works, which such Company has agreed under its corporate seal to make and construct, according to any agreement entered into either with any individual or with any other Company, unless such individual or Company shall consent in writing to such abandonment.

37. *Commissioners to report to Parliament where abandonment authorised by them.*—And be it enacted, that in each case in which the said commissioners authorise the abandonment of the whole or a portion of a railway, they shall, within ten days after issuing their warrant for that purpose, if Parliament be then sitting, or if not, then as soon thereafter as Parliament meets, lay before both Houses of Parliament a copy of every such warrant, accompanied by such

report and observations as shall in the judgment of such commissioners set forth and explain the reasons for their award and warrant in every such case as aforesaid.

38. *Interpretation of terms.*—And be it enacted, that the following words and expressions in this act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number:

Words importing the masculine gender shall extend to females:

The word "person" shall include body corporate:

The word "lands" shall include messuages, tenements, and hereditaments:

The word "railway" shall include all works, buildings, and undertakings authorised to be constructed or carried on in connection with the railway or belonging thereto:

The word "shares" shall include stock:

The word "month" shall mean calendar month.

39. *Short title.*—And be it enacted, that in citing this act in other acts of Parliament, and in legal and other instruments and proceedings, it shall be sufficient to use the expression "The Abandonment of Railways Act, 1850."

40. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULE referred to by the foregoing Act.

(1.) Name of Railway.	(1.) Name of Shareholder.	(1.) No. and Amount of Shares or Stock held by him.	(2.) Whether assenting or dissenting.

(1) The secretary will insert these particulars.
(2) In this column the shareholder will write the word "assenting" or "dissenting," as the case may be, and sign his name thereunder.

THE RAILWAY COMPANIES ACT, 1867

(30 & 31 Vict. cap. 127).

ABANDONMENT.

31. *Provisions of* 13 *&* 14 *Vict. c.* 83, *as to abandonment of railways to apply to all Companies authorised to make railways before this session.*(*a*)—"The Abandonment of Railways Act, 1850,"(*b*) shall extend and apply to all Companies authorised to make railways by act of Parliament passed before the present session, subject and according to the following provisions:

(1.) Section thirty-one of that act shall be read and have effect as if "The Companies Act, 1862," were referred to therein instead of "The Joint-Stock Companies Winding-up Act, 1848," or any act amending the same:

(2.) Section thirty-five of the said act of 1850 shall be read and have effect as if the date of the twenty-first day of May, one thousand eight hundred and sixty-seven, were therein substituted for the date of the eleventh day of February, one thousand eight hundred and fifty:

(3.) Nothing in the said act of 1850 or this act shall be deemed to make it obligatory on the Board of Trade to authorise the abandonment of a railway or part of a railway on any application in that behalf, and the Board of Trade shall not authorise such abandonment in any case unless it appears to them just and expedient so to do, and the Board of Trade may, if they think fit, refuse in any case to authorise such abandonment, except on condition of the money deposited as security for the completion of the railway, or the stocks, funds, or securities on which the same is invested, or the money secured by any bond conditioned for completion of the railway, or for payment of money in default thereof, being applied as part of the assets of the Company.(*c*)

(*a*) See "The Abandonment of Railways Act, 1869," s. 10, *post*, as to the part repeal of this section.

(*b*) "*The Abandonment of Railways Act*, 1850."]—See p. 474, *ante*. It is now (as amended by this act) to be construed as one with "The Abandonment of Railways Act, 1869," *post*.

(*c*) *As part of the assets of the Company*.]—See now sects. 5, 7 of "The Abandonment of Railways Act, 1869," *post*.

32. *Abandonment where three-fifths of capital not subscribed*.—Where it is shown to the satisfaction of the Board of Trade with respect to a Company authorised to make a railway by act of Parliament passed before the present session, that no part, or a part less than three-fifths of the share capital of the Company has been subscribed, the Board of Trade may, if they think fit, proceed under the said act of 1850, as extended by this act, on the application of any person named in the special act (*a*) incorporating the Company as a member or director thereof, or of any person named in the warrant or order directing payment of any deposit under any standing order of either House of Parliament, or of any person who has lent the amount of such deposit, or any part thereof, or has entered into any bond conditioned for the completion of the railway, or for payment of any money in default thereof, and without the preliminary consent of a meeting of shareholders of the Company.

(*a*) *Named in the special act, &c.*]—See now "The Abandonment of Railways Act, 1869," s. 9, *post*, as to the right of a judgment-creditor to apply.

33. *Compensation for damage to land by entry, &c.*—The authority given under this act for the abandonment by a Company of any railway or part of a railway shall not affect the right of the owner or occupier of any lands that have been temporarily occupied by the Company to receive compensation, in accordance with the provisions of "The Railways Clauses Consolidation Act, 1845," for such temporary occupation, or for any loss, damage, or injury that has been sustained by him by reason thereof, or of the exercise as regards such lands of any of the Company's powers.

34. *Cancellation of bonds for completion of railways and release of deposit*.—Where a warrant for abandonment is granted under "The Abandonment of Railways Act, 1850," as extended by this act, the Commissioners of Her Majesty's Treasury may cancel and deliver up any bond entered into by or on behalf of a railway Company for securing the completion of a railway, or, in case the abandonment be of part

of the railway only, may cancel and deliver up such bond on receiving another bond in lieu thereof conditioned for payment of a due proportionate part of the amount secured by such former bond; and any money remaining deposited as security for the completion of the railway, or the stocks, funds, or securities in which the same is invested, or any bank annuities, stocks, funds, securities, or exchequer bills remaining deposited as such security, or in case the abandonment authorised is of part only of a railway, then such proportionate part as the Board of Trade thinks fit of such money, stocks, funds, securities, annuities, or exchequer bills, shall be paid, transferred, or delivered out to the persons who would be entitled to receive the same if the railway had been completed and opened for public traffic; and the Court of Chancery shall, on the application of those persons, order payment, transfer, or delivery out thereof accordingly, on a certificate of the Board of Trade certifying that such a warrant for abandonment has been granted.

35. *Protection for Board of Trade in case of error.*—The issuing in any case of any warrant or certificate relating to deposit, or to any money, stocks, funds, securities, bank annuities, or exchequer bills deposited, or any error in any such warrant or certificate, or in relation thereto, shall not make the Board of Trade or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the money, stocks, funds, securities, bank annuities, or exchequer bills deposited, or the interest of or dividends on the same or any part thereof respectively.

THE ABANDONMENT OF RAILWAYS ACT, 1869

(32 & 33 VICT. CAP. 114).

An Act to amend the Law relating to the Abandonment of Railways and the Dissolution of Railway Companies.—[11*th August*, 1869.]

WHEREAS by the provisions of "The Abandonment of Railways Act, 1850," as revived and amended by "The Railway Companies (Scotland) Act, 1867," and "The Railway Companies Act, 1867," a railway Company may if their whole railway is authorised to be abandoned be wound-up under "The Companies Act, 1862;" and doubts have arisen whether such Company can be so wound-up on the petition of a creditor or of any person except a shareholder, and it is expedient to remove such doubts and otherwise to amend the said acts:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*—This act may be cited as "The Abandonment of Railways Act, 1869."

2. *Interpretation.*—In this act "the court" means the High Court of Chancery in England, the Court of Chancery in Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland respectively.

3. *Construction of act*—13 *&* 14 *Vict. c.* 83—30 *&* 31 *Vict. cc.* 126, 127.—This act shall be construed as one, so far as it extends to Scotland, with "The Abandonment of Railways Act, 1850," as amended by "The Railway Companies (Scotland) Act, 1867," and so far as it extends to England or Ireland with "The Abandonment of Railways Act, 1850,"(*a*) as amended by "The Railway Companies Act, 1867," and those acts are in this act referred to as the principal acts.

(*a*) "*The Abandonment of Railways Act*, 1850."]—See p. 474, *ante*.

4. *Petition for winding-up of railway Company may be presented under* 25 *&* 26 *Vict. c.* 89, *and* 30 *&* 31 *Vict. c.* 131. —Where a warrant has been granted under the principal acts for the abandonment of the whole railway of any railway Company a petition for winding-up(*a*) the affairs of such Company may be presented under "The Companies Acts, 1862 and 1867," by the Company, or by any person who(*b*) under the last-mentioned acts is authorised to present a petition for winding-up a Company, or by any person upon whose application the Board of Trade may proceed in pursuance of section thirty-two of "The Railway Companies (Scotland) Act, 1867," and "The Railway Companies Act, 1867," as the case may be, and for that purpose the railway Company whose railway is so authorised to be abandoned shall be deemed to be an unregistered Company(*c*) which may be wound-up under "The Companies Acts, 1862, and 1867," and the provisions of the principal acts which remain in force relating to winding-up shall be construed as if "The Companies Acts, 1862 and 1867," and the winding-up provided by this section, were therein referred to.

(*a*) *A petition for winding-up, &c.*]—See sect. 82 of "The Companies Act, 1862," p. 158, *ante*.

(*b*) *Any person who, &c.*]—Before this act the court had no jurisdiction to make an order for winding-up an abandoned railway Company, except on a shareholder's petition: (*Re North Kent Railway Extension Railway Company*, W. N. 1869, p. 143; 17 W. R. 789.)

(*c*) *An unregistered Company.*]—See sect. 199 of "The Companies Act, 1862," p. 271, *ante*.

5. *Application of deposit, &c.*—If the warrant for the abandonment was made on condition that(*a*) the money deposited as security for the completion of the railway, or the stocks, funds, or securities in which the same is invested, or the money secured by any bond conditioned for the completion of the railway, or for payment of money in default thereof, should be applied as part of the assets of the Company, the court may, if it think fit, direct that such money, stocks, funds, and securities shall not be applicable for the payment of any debt or part of a debt which, regard being had to what is fair and reasonable as between all the parties interested under all the circumstances of the case, appears to the court to have been incurred on account of the promotion of the Company.

Any person who provided such money or any part thereof, or who entered into such bond, may, subject to any direc-

tions or rules of the court, attend all proceedings under this section and other proceedings in the winding-up, and apply to the court to act under this section.

(*a*) *On condition that, &c.*]—See "The Railway Companies Act, 1867," s. 31, cl. 3, p. 495, *ante*.

6. *Transfer of deposit and assignment of bond.*—Where the warrant for abandonment is made on condition that the money deposited as security for the completion of the railway, or the stocks, funds, or securities in which the same is invested, or the money secured by any bond conditioned for the completion of the railway or for payment of money in default thereof, shall be applied as part of the assets of the Company, the following provisions shall have effect:

(1.) The court in which the Company is being wound-up may order such money, stocks, funds, or securities, or so much thereof as is required to be applied as assets of the Company, to be paid, transferred, or delivered out to the official liquidator, and unless the court is satisfied that the same or any part thereof are not required to be applied as assets, shall not order the same or any part thereof to be paid, transferred, or delivered out to any other person:

(2.) The Commissioners of Her Majesty's Treasury, upon the application of the official liquidator, made with the sanction of the court, may, if they think fit, assign the bond to the official liquidator, and upon such assignment the bond shall be deemed to have been entered into with the official liquidator in his official name, and with his successors in that office, and may, subject to the sanction of the court, be enforced accordingly:

(3.) Any bond so assigned may, after a sufficient sum has been paid thereunder as assets of the Company, be cancelled by the court.

7. *Saving for rights to residue of deposit.*—Nothing in the principal acts or in this act shall affect any right to that part of the money deposited as security for the completion of the railway, or of the stocks, funds, or securities on which the same is invested, or of the money secured by any bond conditioned for the completion of the railway, which is not applied in payment of the debts and liabilities of the Company, or required for that purpose.

8. *Application for abandonment by judgment-creditor.*—Where a Company, no part of the railway of which is open for traffic, has been required by any judgment or order of any court to pay a sum of money to any person or body corporate, and has made default in such payment, the Board of Trade may proceed under the principal acts, upon the application of such person or body, in the same manner as if such person or body were mentioned in that behalf in the said section.

9. *Notices under sect.* 17 *of* 13 *&* 14 *Vict. c.* 83.—The notice given in pursuance of section seventeen(*a*) of "The Abandonment of Railways Act, 1850," may, where there is no secretary of the Company, or no office of the Company, require claims or demands to be sent to such person or to such place as the Board of Trade direct.

(*a*) *Section seventeen, &c.*]—See p. 483, *ante*.

10. *Repeal of winding-up sections of* 13 *&* 14 *Vict. c.* 83.—Section twenty-nine of "The Abandonment of Railways Act, 1850," from "and they shall accordingly" to the end of that section, and sections thirty, thirty-one, thirty-two, and thirty-three of "The Abandonment of Railways Act, 1850," and so much of section thirty-one of "The Railway Companies (Scotland) Act, 1867," and of "The Railway Companies Act, 1867," respectively, as amends the said sections, are hereby repealed, without prejudice to anything already done thereunder; and all proceedings commenced in pursuance of those sections shall be continued under the provisions of this act.

INTERNATIONAL LAW OF COMPANIES.

A CORPORATE body duly created according to the laws of one state is recognised as such by other states, and may sue and be sued in its corporate name in their courts.(*a*)

Suits by and against foreign Companies have been of common occurrence in our courts,(*b*) and the mere fact that such a Company has its principal place of business abroad does not exclude the jurisdiction of our courts where the Company can be made amenable to their process.(*c*)

A Company, however, is bound by and must conform to the laws of the country where it carries on its business, and it is not necessarily the case that it may in a foreign state exercise all the rights and privileges, or do all the acts which it possesses or may do according to the laws in force in its own state. It may also be added that the contracts and other dealings of a Company will be governed by the law of the place where they take place.(*d*)

The relations with respect to Companies between England and France, Belgium and Italy respectively, are defined by the three following conventions:

CONVENTION

BETWEEN

HER MAJESTY AND THE EMPEROR OF THE FRENCH.

The following is a copy of the convention between Her Majesty and the Emperor of the French, relative to Joint-Stock Companies, signed at Paris, April 30, 1862. Ratifications exchanged at Paris, May 15, 1862:—

"Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty, the Emperor of the French, having judged it expedient to come to an understanding in order to define, within their respective dominions and possessions, the position of commercial, industrial, and financial Companies and associations, constituted and autho-

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(*a*) See Story's "Conflict of Laws," par. 565.

(*b*) See *Dutch West India Company* v. *Moses* (1 Str. 611), *South Carolina Bank* v. *Case* (8 B. & Cr. 427), and *Bower* v. *Société des Affrêteurs du Great Eastern* (17 L. T. N. S. 490).

(*c*) See *The Carron Company* v. *Maclaren* (5 Ho. Lords Cas. 416), and *Maclaren* v. *Stainton* (16 Beav. 279).

(*d*) See *Bramley* v. *South Eastern Railway Company* (12 C. B. N.S. 63), and *Bower* v. *Société des Affrêteurs du Great Eastern* (17 L. T. N. S. 490).

rised in conformity with the laws in force in either of the two countries, have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say :—

"Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, the Right Hon. Henry Richard Charles Earl Cowley, Her Majesty's Ambassador Extraordinary and Plenipotentiary to the Emperor of the French ;

"And His Majesty the Emperor of the French, M. Edouard Antoine Thouvenel, Senator, his Minister and Secretary of State for the Department of Foreign Affairs, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles :—

"ART. I. The high contracting parties declare that they mutually grant to all Companies and other associations, commercial, industrial, or financial, constituted and authorised in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action, or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

"ART. II. It is agreed that the stipulations of the preceding article shall apply as well to Companies, and associations constituted and authorised previously to the signature of the present convention, as to those which may subsequently be so constituted and authorised.

"ART. III. The present convention is concluded without limit as to duration. Either of the high powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two high powers, moreover, reserve to themselves the power to introduce into the convention, by common consent, any modifications which experience may show to be desirable.

"ART. IV. The present convention shall be ratified, and the ratifications shall be exchanged at Paris in fifteen days, or sooner if possible.

"In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

"Done in duplicate at Paris, the 30th of April, 1862."

"COWLEY.
"THOUVENEL."

CONVENTION

BETWEEN

HER MAJESTY AND THE KING OF THE BELGIANS.(*a*)

ART. I. The high contracting parties declare that they mutually grant to all Companies and other associations commercial, industrial, or financial, constituted and authorised in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the

(*a*) See *The London Gazette* of December 9, 1862.

dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

ART. II. It is agreed that the stipulations of the preceding article shall apply as well to Companies and associations constituted and authorised previously to the signature of the present convention as to those which may subsequently be so constituted and authorised.

ART. III. The present convention is concluded without limit as to duration. Either of the high powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two high powers, moreover reserve to themselves the power to introduce into the convention, by common consent, any modifications which experience may show to be desirable.

DECLARATION exchanged between the British and Italian Governments relative to Joint-Stock Companies. Signed at Florence, November 26, 1867.

DECLARATION:

The Government of Her Majesty the Queen of Great Britain and Ireland, and the Government of His Majesty the King of Italy, with a view to the reciprocal regulation in the two countries of the position of joint-stock Companies and other commercial, industrial, and financial associations, have respectively authorised Sir Augustus Berkeley Paget, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Italy, and His Excellency Count Louis Frederick Menabrea, President of the Council and Minister Secretary of State of His Majesty the King of Italy for the department of Foreign Affairs, to agree—

That joint-stock Companies and other associations commercial, industrial, and financial, constituted and authorised in conformity with the laws in force in either of the two countries may freely exercise in the dominions of the other all their rights, including that of appearing before tribunals whether for the purpose of bringing an action, or for defending the same, in conformity, however, with the laws and customs in force in the said countries.

That these dispositions shall be applicable as well to Companies and associations constituted and authorised previously to the signature of this present declaration as to those which may subsequently be so constituted and authorised.

That the present declaration, made without limit as to duration, may be revoked by either party giving a year's previous notice, and that such modifications may, by common consent, be introduced into it, which experience may show to be desirable.

Done at Florence, in duplicate, the 26th of November, 1867.

(L.S.) A. B. PAGET.
(L.S.) L. F. MENABREA.

APPENDIX.

THE STANNARIES ACT, 1869

(32 & 33 VICT. CAP. 19).

An Act for amending the Law relating to Mining Partnerships within the Stannaries of Devon and Cornwall, and to the Court of the Vice-Warden of the Stannaries.—[24*th June*, 1869.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. *Short title.*—This act may be cited as "The Stannaries Act, 1869."

2. *Interpretation of terms.*—In this act—

The term "the Stannaries" means the Stannaries of Devon and Cornwall:

The term "the vice-warden" means the vice-warden of the Stannaries:

The term "the court" means the court of the vice-warden:

The term "the registrar" means the registrar of the court:

The term "Company" includes any person or partnership body working a mine in the Stannaries:

The term "purser" means the purser for the time being of a Company, and if there is no purser, then the secretary for the time being, or if there is no secretary, then the principal agent for the time being of a Company:

The term "cost book" includes all books and papers relating to the business of a mine, which are for the time being kept by a purser, or which, according to the custom of the Stannaries, or the directions of the Company, ought to be kept by him.

3. *Extent and application of act.*—This act extends only to mines within the Stannaries, and subject to the jurisdiction of the court, or within the cognizance of the vice-warden; and nothing in this act shall extend to Companies registered under any of the Joint-Stock Companies Acts, except where such Companies are expressly mentioned or necessarily implied.

Meetings and Proceedings generally.

4. *Majority in value at meeting to bind.*—Except as otherwise provided by this act, or by the rules or regulations of any Company, a resolution

passed at a meeting of the Company, by the votes of a majority in value of such of the shareholders as are present in person or represented by proxy at the meeting, shall be deemed the resolution of the meeting, and shall be binding on all the shareholders in the Company, whether present or absent, but nothing in this clause shall authorise any ordinary meeting to transact any business which an ordinary meeting could not transact at the time of the passing of this act, except as is hereinafter provided.

5. *Proceedings with special notice.*—Where anything to be done by a Company is by this act required to be done at a meeting with special notice, it shall not be valid if done otherwise than at a meeting notice whereof is served on the several shareholders not less than seven clear days before the day of the meeting, specifying the place, day, and hour of meeting, and the business to be transacted thereat, or so much thereof as is required to be done with special notice.

6. *Definition of special resolution.*—A resolution passed by a Company shall be deemed a special resolution within this act when it has been passed at a meeting with special notice, and has been confirmed at a subsequent meeting with special notice; the last-mentioned meeting being held not less than fourteen days and not more than one month after the meeting at which the resolution was first passed.

7. *Regulations by special resolution.*—A Company may, by special resolution passed by not less than three-fourths in value of the shareholders present in person or represented by proxy at the meeting held for the purpose of confirming the resolution to be made special, from time to time alter the rules and regulations for the time being by custom or otherwise governing the Company, and make new or additional rules or regulations in that behalf; and any rules or regulations so made by special resolution shall be of the like validity and effect as if they had been made at the original formation of the Company; but nothing in this act shall authorise a Company to make rules or regulations inconsistent with the provisions of this act, or shall abrogate any special rules or regulations existing at the passing of this act for the management of any Company, or shall authorise the making of any special rule or regulation to enable a Company existing at the passing of this act to borrow money.

8. *Service of notices.*—A notice to be served by a Company for any purpose of this act on a shareholder shall be served personally, or shall be served by prepaid letter sent by post addressed to him at his address as entered in the cost book, in which case the notice shall be taken as served at the time when the letter containing it was put into the post-office; and in proving such service it shall be sufficient to prove that the letter was properly addressed and prepaid, and was put into the post-office, and the time when it was put in. As regards a Company existing at the passing of this act, the address of a shareholder as known to the purser at the passing of this act shall be and remain entered in the cost book as his address, unless and until he gives notice in writing to the contrary.

Accounts.

9. *Entry of accounts.*—The purser of every Company shall, once at least in every four months, truly enter in the cost book of the Company accounts showing the actual financial position of the Company at the

end of the financial month of the Company last preceding the time of entry, including a statement of all credits, debts, and liabilities, and distinguishing in such accounts the amount of calls paid and calls not paid, with accurate lists of all the shareholders for the time being in the Company, with their respective addresses, corrected from time to time as occasion requires, and all other accounts, documents, and things which the purser is for the time being required to enter therein by the custom of the Stannaries, or by the directions of the Company; and after the passing of this act all existing or future Companies having any rules or regulations touching the management of the Company or conduct of the business of any mine, shall file a true copy of them at the office of the registrar without payment of any fee; and such rules or regulations shall be subject to the inspection of all applicants at reasonable times; and if any Company shall neglect to file such rules or regulations as above required, then any shareholder in or creditor of any such Company may apply for an order of the court to file such rules or regulations forthwith, which order shall be enforced by the process of the court.

Calls.

10. *Audit and call.*—At any meeting of a Company with special notice the accounts of the Company may be audited, and a call may be made.

11. *Call for prospective expenses.*—A call may be made by a Company for the purpose of defraying the whole or any portion of the estimated expenses to be incurred at any time within three months after the date of the meeting at which the call is made.

12. *Discount or interest on calls.*—At the time of making a call, a Company may direct that discount not exceeding five per cent. shall be allowed to every shareholder on payment of the call, at or within the time appointed for payment thereof, and may direct that interest at the rate of five pounds per centum per annum shall be charged on all amounts due on account of a call, and remaining unpaid after one month from the time appointed for the payment thereof.

13. *Recovery of calls, &c.*—The amount for the time being unpaid of any call made after the passing of this act on any share in a Company shall be deemed to be a debt due from the holder of such share to the Company, and if at the time appointed by the Company for the payment of any such call any shareholder shall fail to pay the amount thereof, it shall be lawful for the Company to sue such shareholder for the amount of such call, in any court of law having competent jurisdiction, in the name of the purser for the time being of the Company, whether such purser is a shareholder in the Company or not, as the nominal plaintiff for the Company, and to recover the amount of such call, together with interest for the same and costs of suit; and in any action to be brought by the Company to recover the amount of such call it shall be sufficient in the declaration or other proceeding in the said action to state that the defendant or (in case of such action being brought against the legal personal representative of a deceased shareholder) that the deceased shareholder was at the time of such call being made the holder of one share or more in the Company (stating the number of shares), and that the defendant, or (in case of the death of a shareholder as aforesaid) that the defendant or defendants, as executor or administrator or executors or administrators

of such deceased shareholder, is or are indebted to the Company in the sum of money to which the calls in arrear and interest shall amount, in respect of one call or more upon one share or more (stating the number and amount of each of such calls), and that the plaintiff is the purser of the Company and sues in the action as nominal plaintiff for the Company, and on the trial or hearing of such action it shall be sufficient to prove, as a *primâ facie* case on the part of the plaintiff, that the defendant or such deceased shareholder, at the time of making such call, was a holder of such one share or more as may be in the Company, and that such call was duly made, and that the plaintiff at the commencement of the action was acting as the purser of the Company; and it shall not be necessary to prove the appointment or authority of the persons who made such call, or the appointment of such purser; provided, that in case of a change of purser pending the proceedings, the name of the purser for the time being may, by leave of the court in which the proceedings are pending, or of a judge or proper officer thereof, be substituted for that of a person ceasing to be purser by death, resignation, or otherwise; but no County Court in the Stannaries shall have any jurisdiction under this present clause in any case in which the sum sought to be recovered shall exceed fifty pounds, unless it shall be by law otherwise expressly provided.

Transfer of Shares.

14. *Calls due at transfer.*—A Company shall not be bound to recognise a transfer of a share until all calls made in respect of such share, with interest and expenses, have been paid.

15. *Transfer of fractional parts of shares.*—A Company shall not be bound to recognise the transfer of a fractional part of a share.

Forfeiture of Shares.

16. *Notice on failure to pay call*—If a shareholder fails to pay a call on the day appointed for payment thereof, the Company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, with or without interest and any expenses that may have accrued by reason of such non-payment, and stating to the effect that in the event of non-payment in accordance with the notice the share in respect of which such call was made will be liable to be forfeited.

17. *Forfeiture on failure to pay.*—If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the Company to that effect passed at a meeting with special notice.

18. *Sale of forfeited shares.*—Any share so forfeited shall be carried to an account to be called "The Account of Forfeited Shares," and shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit; and any shareholder may purchase any such share if sold.

19. *Evidence of forfeiture, &c.*—A statutory declaration in writing by the purser of a Company that the call in respect of a share was made,

and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by resolution of the Company to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration, and the receipt of the purser for the price of such share if sold, shall constitute a good title to such share, and the purchaser shall be entered in the cost book as a shareholder in respect of the share, and thereupon he shall be deemed the holder of such share, discharged as against the Company from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity in the proceedings in reference to such sale.

20. *Payment notwithstanding forfeiture.*—Any shareholder whose share has been forfeited shall nevertheless be liable to pay all calls, interest, and expenses payable on or in respect of the same at the time of forfeiture.

Relinquishment of Shares.

21. *Disposal of relinquished shares.*—Where a share in a Company is relinquished, it shall be carried to an account to be called "The Account of Relinquished Shares," and shall be deemed to be the property of the Company, and may be disposed of as the Company thinks fit, and any shareholder may purchase any such share if sold.

22. *Relinquishment to be in writing.*—Every relinquishment of a share shall be by notice in writing delivered to the purser, but a Company shall not be bound to recognise the relinquishment of a fractional part of a share.

23. *Evidence of relinquishment, &c.*—A statutory declaration in writing by the purser of a Company that a share has been relinquished shall be sufficient evidence of the facts therein stated as against all persons interested in the share, and that declaration, and the receipt of the purser to a purchaser of the share for the price thereof if sold, shall constitute a good title thereto, and the purchaser shall be entered in the cost book as a shareholder in respect of the share, and thereupon he shall be deemed the holder thereof, discharged as against the Company from all unpaid calls, interest, and expenses due to the Company in respect thereof accrued before his purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity in the proceedings in reference to such sale.

Sale of Mine.

24. *Power of sale of mine, &c., as going concern.*—Without prejudice to the landlords, lessors, or others having any estate, charge on, or interest in the land in which the mine is situate, or to the creditors, and their customary lien on the saleable machinery and materials belonging to the Company, a Company shall have power, by a special resolution to which three-fourths in value of the shareholders shall consent, either in writing or at a meeting, to sell and dispose of the machinery and materials belonging to the Company with or without the legal or equitable interest of the Company in the leases or sett on which any mine belonging to the Company is worked, as a going concern, provided that

every such sale shall be by public auction, and that due notice of the intended sale be given by public advertisement in some local newspaper, and in some public journal or newspaper specially relating to mining Companies, for two successive weeks before the sale.

Winding-up.

25. *Limitation of liability of past shareholders.*—On a Company being wound-up in the court of the vice-warden or any other court, a former shareholder, notwithstanding the provisions contained in "The Companies Act, 1862," Part 8, section 200,(*a*) shall not be liable to contribute to the assets of the Company if he has ceased to be a shareholder for a period of two years or upwards before the mine has ceased to be worked or before the date of the winding-up order.

Wages of Miners.

26. *Wages of miners, &c.*—On a Company formed for or engaged in working a mine (including a Company registered under any of the Joint Stock Companies Acts) being wound-up in the court of the vice-warden or any other court or otherwise, the date of the winding-up order having been not earlier than two months after the passing of this act, then and in every such case the amount (if any) due at the date of the winding-up order to miners, artisans, and labourers employed, wholly or in part, in or about the mine, in respect of their wages or other earnings in relation to the mine, not exceeding three months' wages or earnings to each such person, shall be paid in priority to all other debts of the Company.

Procedure of the Court.

27. *Affidavits used in the court.*—Whereas since the passing of the act eighteen Victoria, chapter thirty-two, for amending and extending the jurisdiction of the court of the vice-warden, and of "The Companies Act, 1862," the experience of the court has suggested the expediency of some amendment of the provisions of those acts, so far as they relate to the Stannaries and the jurisdiction of the court: Be it enacted, that all affidavits, affirmations, and declarations, shall be available in suits, causes, and matters in the court, although not sworn, made, and taken by or before a commissioner of the court; provided the same shall have been sworn, made, or taken by or before any commissioner authorised to administer oaths in the Superior Courts of equity or of common law in England or Ireland, or in the Isle of Man or the Channel Islands, or by the officers exercising like powers to administer oaths in Scotland, or by any of the courts, judges, or other persons having like authority in the dominions of the Crown beyond seas, or in foreign parts, specified or described in the act fifteen and sixteen Victoria, chapter eighty-six, section twenty-two, and the act sixteen and seventeen Victoria, chapter seventy-eight; and the vice-warden or registrar shall, on the production before him of such affidavits, affirmations, or declarations purporting to be duly and regularly sworn, made, or taken by any of the courts or persons hereinbefore referred to, presume the same to have been so sworn,

(*a*) See p. 276, *ante*.

made, or taken, unless the contrary be proved to his satisfaction; and in case of wilful and corrupt false swearing, affirming, or declaring in such document so produced, or of the production or use by any party of such document, knowing the same to be a forged or spurious one, the offender shall be liable to all the penalties, punishments, and consequences specified in sections twenty-three and twenty-four of the act fifteen and sixteen Victoria, chapter eighty-six: Provided also, that all lawful fees due and demandable upon swearing, making, or taking such affidavits, affirmations, or declarations, by or before any of the courts or persons above referred to, shall be paid or tendered to such court or person by the party applying for such document.

28. *No demand necessary before enforcing order to pay, produce, or deliver.*—Whenever a decree or order of the court for payment of money, or production or filing or delivery up of any books, papers, deeds, or accounts, or the delivery up of property, real or personal, shall have been made in a suit or matter whereof the said court has cognisance, no formal demand shall be necessary, but the person or party who shall have been so decreed or ordered to pay such money, or produce or file or deliver up such documents or property, on being duly served with such decree or order, shall be bound to obey the same, and process shall thereupon issue to enforce performance, without further special application to the court.

29. *Enforcing process through the registrar of a County Court.*—In enforcing execution of any judgment, decree, or order of the court by writ sent to the registrar of any County Court under sections nine and ten of the act eighteen Victoria, chapter thirty-two, the person or party entitled to recover any moneys awarded to him by such judgment, decree, or order may issue such process to the County Court, although the sum sought to be recovered may exceed the sum of fifty pounds, provided the sum do not exceed two hundred and fifty pounds, including the costs of applying to the court for leave to issue such execution, where such leave shall be necessary by the rules of the court; and such process shall hereafter be availahle to any party entitled to levy such money, not exceeding the said sum of two hundred and fifty pounds, by a like writ of execution sent to the registrar of any County Court within the Stannaries, as well as beyond the Stannaries, subject to the payment of all lawful fees for execution in such County Court, and subject in other respects to the provisions of sections nine and ten of the act last above mentioned, except that the judge of a County Court within the Stannaries may, if he thinks fit, remit any claim of interpleader arising on the execution of such writ for determination by the court.

30. *Execution of process of attachment within the Stannaries.*—If any person residing or being within the Stannaries shall be in contempt for disobedience of any order of the court other than for the payment of money leviable by the ordinary civil process of the court, and be thereupon attached by the bailiffs of the court, or by a messenger or messengers of the court specially named or appointed by the court for execution of the writ of attachment issued by the court, such bailiffs or messengers shall forthwith take into their custody the person so attached, and bring him with all convenient speed to Truro, there to be examined by or before the vice-warden, if he shall then he sitting at Truro, or before the registrar there, touching the matter of his alleged contempt; and upon such examination the vice-warden or registrar shall, if the

offender shall have sufficiently cleared himself of the contempt, discharge him out of custody, or if he shall not have so cleared himself, shall commit him to the common gaol at Bodmin, or, in case of contempt within the Stannaries of Devon, to the borough gaol at Plymouth, there to remain until he shall have submitted to the order of the court, or shall be otherwise discharged in due course of law; and such writ of attachment, and any commitment thereon, shall issue in the name of the Lord Warden of the Stannaries, with the seal of the court attached.

31. *Service of process, &c., beyond the Stannaries.*—Whereas the service of process on the common law side of the court in any part of England, without the special order of the vice-warden, has been found inconvenient, and in some cases liable to abuse: Be it enacted, that no such service of process out of the limits of the Stannaries, in suits or plaints on the common law side of the court, shall hereafter be effected without the special order of the vice-warden, made on a statement of the nature and object of such suit or plaint; except in the case of actions of ejectment brought under the authority of section fifteen of the act eighteen Victoria, chapter thirty-two.

32. *On appeals to the Lord Warden, a deposit to be made.*—In all cases of appeals against any judgment, decree, or order of the court, besides the bond to the registrar required by the act eighteen Victoria, chapter thirty-two, section twenty-six, a deposit of twenty pounds shall be made in the hands of the registrar, to be paid to the opposite party when the judgment, decree, or order is not reversed, unless the court shall otherwise direct; and if the appeal against any decree or order be prosecuted in the name or on the behalf of any registered Company with limited liability, or in the name or on behalf of any person who has recently become bankrupt, or has executed any unsatisfied deed of arrangement, composition, or inspectorship under any Bankruptcy Act, the registrar of the court may require that a sufficient surety be joined as co-obligor in the bond which the appellant is bound to give in such case, who shall be personally liable to pay the taxed costs of the appeal to the extent of fifty pounds, if the judgment, decree, or order be not reversed; and the appellant shall also deposit in the hands of the registrar the sum of twenty pounds, payable as hereinabove directed in the case of ordinary appeals.

33. *Duties of registrar in liquidation of a Company.*—Where an order is made for the winding-up a Company in the court, whether the same be a registered or an unregistered Company, and no official liquidator is appointed, the registrar shall have authority, with the sanction of the vice-warden, to perform all the ordinary duties of an official liquidator, and to exercise all the powers (*a*) assigned by "The Companies Act, 1862," to such liquidator, so far as such duties or powers are not incompatible with his official duties as registrar.

Provided always, that the registrar shall not in such case be called upon to give any such security as may be required of an official liquidator under section ninety-two of the last-mentioned act, unless the Lord Warden of the Stannaries or the vice-warden by some general rule of the court shall otherwise order, nor shall he be entitled to any remuneration for the performance of the said duties, other than the

(*a*) *All the powers, &c.*]—See sect. 95 of "The Companies Act, 1862," p. 180, *ante*.

salary now received by or that may hereafter be assigned to him in his official character of registrar; nor shall it be necessary for him to use the name or style of official liquidator, nor any other style than that of registrar, unless it shall become necessary for him to take out letters of administration to any deceased contributory; and in proving a debt due from any contributory who shall have become a bankrupt within the intent and meaning of section eighty-seven of "The Companies Act, 1862," a certificate of the debt signed by the registrar, with the seal of the court attached, shall be accepted in the Court of Bankruptcy as sufficient proof of such debt as against the estate of the bankrupt, without requiring the oath or affidavit of the registrar.

Provided also, that the registrar in the performance of such duties and exercise of such powers shall not be liable to any penalty prescribed by the said "Companies Act, 1862," and imposed on official liquidators as such, or become personally liable in respect of any act done or proceeding taken by him by the order or authority or with the sanction of the vice-warden acting in his judicial character.

34. *Attachment of debt due to a contributory on winding-up.*—In cases where several Companies are in course of liquidation by or under the superintendence of the court, if it shall appear to the vice-warden that a person who is a contributory of one of the said Companies is also a creditor claiming a debt against one of the other Companies, the vice-warden may, in his discretion, and after due inquiry into the facts, direct that the said debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain, as a security for payment of all or any calls that are or may in course of liquidation become due from him to the Company of which he is a contributory; and the amount thereof shall be applicable and applied to such payment in due course; provided that no such order of attachment shall prejudice any claim which the Company so indebted to him as creditor may have against him by way of set-off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the said debt in favour of any third person.

35. *Fraudulent transfers of shares.*—A transfer of shares made for the purpose of getting rid of the further liability of a shareholder, as such, for a nominal or no consideration, or to a person without any apparent pecuniary ability to pay the reasonable expenses of working a mine, or to a person in the menial or domestic service of the transferor, shall be presumed to be a fraudulent transfer, and need not be recognised by the Company, or by the court on the winding-up of the Company, whether the Company be a registered or unregistered Company.

36. *Jurisdiction to restrain sales of setts.*—The jurisdiction of the court to grant injunctions restraining sales of machinery and other effects on mines is hereby extended so as to authorise the granting of injunctions restraining sales of setts where equity so requires, and the jurisdiction conferred by this section may be exercised in creditors' suits, or on the application of a shareholder in a Company.

37. *Issuing injunction orders by the registrar in certain cases.*—It shall be competent for the registrar, on the application of either a creditor or a shareholder, to issue injunction orders in customary creditors' suits pending in the court, and to forbid the sale of setts, leases, machinery, or other effects on or belonging to the mine on the usual allegation of urgency, or to issue such orders in other cases of like urgency or imminent waste or damage to property; and in such cases the party or parties

so enjoined may appear and show cause before the registrar, and apply to him to suspend or dissolve the order; but such application to the registrar shall not be exclusive of the existing power of the vice-warden to issue such orders, though he may not then be sitting within the Stannaries, nor prevent him from reconsidering the order of the registrar, on the motion or complaint of any of the parties interested in it.

38. *Hearing of petition for winding-up.*—The provision of section eighty-three of "The Companies Act, 1862," (*a*) contained in second paragraph thereof, shall be amended and read as follows; namely, that the vice-warden may direct that petitions to wind-up a Company shall be heard by him at such time or place as he may think fit within the Stannaries, or within or near to the place where the registered or other chief office of the Company is situate, or if such office be distant one hundred and fifty miles or more from Truro (measured by the public railways), then in London or Westminster; or with the consent of the party or parties petitioning, and of the Company represented by its secretary, purser, or other proper officer, the hearing may be in any part of England; and all orders made by the vice-warden on such hearing in any of the above cases shall be as valid and effectual as if they had been made at Truro.

39. *Adjournment of sittings and appointment of deputy vice-warden.*—Sections seven and eight of the act two and three Victoria, chapter fifty-eight, and the section twenty-four of the act eighteen and nineteen Victoria, chapter thirty-two, are hereby repealed; and in lieu thereof be it enacted, that if in consequence of illness, or accident, or other disability, the vice-warden shall not attend at Truro on the day and time appointed for his sittings there, the registrar shall have power to open the court, and adjourn the sittings to some other day, on which adjournment day all persons summoned or bound to attend the sittings shall be in attendance, as if the vice-warden himself had adjourned them; and if, by reason of such illness, accident, or other disability, or for any other cause deemed by the Lord Warden to be a reasonable cause, the vice-warden shall desire to appoint a deputy for a time certain, not exceeding six months, he may, with the approval of the Lord Warden, appoint such deputy, being a barrister of five years' standing and not less, with all the powers and judicial functions of the vice-warden himself; and if the vice-warden shall, by reason of such illness, accident, or disability, be unable or shall neglect to make such appointment, it shall be competent for the Lord Warden of the Stannaries to nominate such temporary deputy, with the qualification, powers, and functions aforesaid, with such directions touching the remuneration of such deputy as he may think fit.

40. *Provision for a temporary registrar on a future vacancy.*—Whereas inconvenience may hereafter be occasioned by the death of the registrar and the delay in appointing a successor, be it enacted, that the vice-warden for the time being shall in such case have power to employ the assistant registrar, if there be one, or any other competent person, being a clerk or officer of the court, to execute, under the direction of the vice-warden, all or any of the necessary duties of registrar, until such time as the successor of the deceased registrar shall have been duly appointed, and such temporary registrar may, if the Lord Warden shall think fit, be

(*a*) See p. 161, *ante*.

remunerated for such extra duty out of the salary accruing between the decease of the last registrar and the appointment of his successor, who shall be entitled to receive the balance (if any) of the salary so accruing during that interval.

41. *Provision as to half-yearly remissions.*—From and after the passing of this act, the whole of the several provisoes contained in section thirty of the act six and seven William the Fourth, chapter one hundred and six, and in section thirty-six of the act eighteen and nineteen Victoria, chapter thirty-two, respectively, which in any way relate to, or empower, or require, half-yearly remissions of the assessment, in such provisoes respectively mentioned or referred to, shall be and the same are hereby repealed, and thereupon the moneys accruing by reason of such remission shall be applicable and be applied to such of the several purposes specified in the one hundred and seventy-second section of "The Companies Act, 1862," touching the application of the fees arising under proceedings taken for winding-up mining Companies, as the Lord Warden of the Stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall accumulate by investment, as to the whole or part of the accruing moneys, in the manner directed in and by the provisions of that section.

42. *Vacations in the court.*—Whereas by the act six and seven Victoria, chapter one hundred and six, section seventeen, the court is, for the purpose of the entry of pleadings, orders, proclamations, and other matters touching practice, process, or execution, to be at all times open except on Sunday, Christmas-day, Good Friday, and days of public fast or thanksgiving, and no other days or times are specified wherein the court or its offices may be lawfully closed, nor is any period of vacation for the court or its officers and clerks provided: Be it enacted, that the court and offices may hereafter be closed on Christmas-day and the six following days, on Good Friday and the six following days, and that the space of six consecutive weeks, beginning on the first day of September in every year, shall be deemed to be the vacation of the said court, during which the attendance of the officers of the court will be dispensed with; so nevertheless that during the continuance of those days and times, and the above vacation, provision shall be made for the receipt and payment or payments of money by or to the proper officer of the court, whereof due notice shall be from time to time given: Provided also, that during such times and vacation applications may be made for injunction orders, either to the vice-warden or to the registrar, in any part of England, whether within or beyond the Stannaries.

43. *Power to make general rules and orders.*—The powers contained in the act eighteen Victoria, chapter thirty-two, sections twenty-three and twenty-six, for making general rules and orders of the court touching the procedure, practice, pleading, court fees, taxation of costs, and forms on the equity and common law side of the said court, and other business of the said court, and also touching the regulation of the practice, fees, and costs of appeals pending before the Lord Warden of the Stannaries, whether heard by and before himself, or remitted by him for the determination of the Judicial Committee of the Privy Council, or to the Court of Appeal in Chancery, shall be deemed and taken to extend and apply to this act, and to the several provisions contained herein. Rules and orders made in pursuance of the powers contained in the said act or in

this act with respect to fees shall be made only with the sanction of the Commissioners of Her Majesty's Treasury.

44. *Officer not entitled to compensation in case of alteration of duties or abolition of office.*—A person shall not be entitled to any compensation in respect of any emoluments received by him for duties performed in pursuance of the provisions of this act, or in respect of the emoluments of any office in or connected with the court, or with the Lord Warden of the Stannaries or vice-warden, to which such person is appointed after the passing of this act, in case any alteration is made in such duties or in the duties of such office, or in case such duties or such office are abolished.

Savings.

45. *Saving for existing creditors.*—Nothing in this act shall take away or abridge any right or remedy of any creditor of a Company existing at the passing of this act.

46. *Saving for customs of Stannaries, &c.*—Nothing in this act contained shall exclude the right of any shareholder of a Company, miner, creditor, or other customary suitor of the court to resort to all or any of the remedies heretofore used and enjoyed, and still subsisting by custom or statute in the said court as now constituted by law unless such right is expressly abrogated by this act.

ADDENDA.

To complete the work up to the latest possible time, the following addenda of cases, decided while the work was going through the press, are given, with references to the page and line of the text on which they more immediately bear.

PAGE 12, line 24, add new paragraph:

As to the liability of a shareholder in a Company which has increased the nominal value of its shares beyond the amount specified in its memorandum, by a resolution not registered, and of which he had no notice at the time of his application for shares, see *Re European Central Railway Company, Gustard's case* (Law Rep. 8 Eq. 438).

PAGE 17, line 26, add:

The articles of a Company gave the directors power from time to time to make bye-laws, which were to be entered in a book and signed by three directors. One of the bye-laws which they made, prohibited the taking a transfer of shares into the name of the Company. Afterwards a resolution to have certain shares transferred into the name of the Company, was passed by six directors, and entered in the minute book, but was not entered in the book of bye-laws, nor signed by three directors. It was held that no third person dealing with the directors could be affected by the bye-law, unless it was proved that he knew of it; and that in the present case if he had known of it, he would not have been affected by it, as the resolution of the directors who had power to alter it, was sufficient to abrogate it: (*Re Asiatic Banking Corporation, Royal Bank of India's case*, Law Rep. 4 Ch. App. 252.)

PAGE 17, line 19 from bottom, add:

As to the name of a shareholder in A. Company, whose name had been placed on the register of B. Company, in pursuance of an agreement for the amalgamation of the two Companies (which was afterwards declared void and set aside), being struck off the list of contributories of the B. Company, after an order had been made for winding it up, see *Re Oriental Commercial Bank, ex parte Alabaster* (38 L. J. Ch. 32; Law Rep. 7 Eq. 273).

See, also, a similar decision in the case of *Re London and Northern Insurance Corporation, Stace and Worth's case* (Law Rep. 4 Ch. App. 682.)

PAGE 18, line 10 from bottom, add:

As to a transgression of their powers, by the directors of a Company whose articles authorised, amongst other things, "making advances and

procuring loans on, and the investing in securities," see *Joint-Stock Discount Company* v. *Brown* (Law Rep. 8 Eq. 381).

With regard to the liability of directors, to be compelled to refund to their Company promotion money not paid in strict accordance with the Articles of Association, see *Madrid Bank* v. *Pelly* (Law Rep. 7 Eq. 442).

As to the Memorandum or Articles of a Company, authorising the directors to speculate in its shares, see *Re Land Credit Company of Ireland* v. *Lord Fermoy* (Law Rep. 8 Eq. 7).

PAGE 19, line 16 from bottom, after "p. 295" add:

Law Rep. 7 Eq. 88.

PAGE 21, line 13, add:

As to the right of a creditor, who holds debentures as a collateral security for his debt, to prove in the winding-up of the Company for the debentures, see *Re Blakely Ordnance Company, Metropolitan and Provincial Bank's Claim* (Law Rep. 8 Eq. 244).

PAGE 21, line 7 from bottom, add:

See, also, *Re China Steamship Company, Ex parte Mackenzie* (Law Rep. 7 Eq. 240).

PAGE 21, line 7 from bottom, add:

The plaintiff, the holder of a number of debentures for 100*l.* each issued by a Company, payable to him or his assigns, assigned some of them to C. and S., the transfers to whom were duly registered. The defendants also issued certificates to C. and S., describing them as "registered proprietors," and in other dealings with them treated them as being in fact such proprietors. After the assignment, but previous to the day fixed for the payment of the debentures, and previous to some of the dealings with C. and S. above mentioned, the plaintiff became indebted to the defendants for unpaid calls on shares held by him in their Company. The defendants, under their articles, had a primary lien on the debentures of any member of the Company who might be absolutely or contingently liable to the Company in any amount or on any account whatsoever; and the debentures assigned to C. and S. having become due, the defendants sought, in actions brought against them in the name of the plaintiff, to recover the amounts due to C. and S. respectively, to set off the debt due to them from the plaintiff. It was held that the defendants had by their original contract with the plaintiff so contracted, and by their subsequent dealings with C. and S. so conducted themselves, as to have lost in equity the right to set off the plaintiff's debt against the claims of C. and S.: (*Higgs* v. *Northern Assam Tea Company*, Law Rep. 4 Ex. 387.)

In another case seventeen debentures of 100*l.* each were issued to the promoter of a Company in payment of a sum of money stipulated by the Articles of Association to be paid to him on condition of his indemnifying the directors against all costs, charges, and expenses incurred previously to the allotment of shares. He failed to pay such costs and expenses, and they were proved in the winding-up of the Company, to the amount of about 208*l.* It was held that the Company was entitled to set off one-seventeenth part of the sum so proved against the amount of each debenture: (*Re South Blackpool Hotel Company, Ex parte James*, Law Rep. 8 Eq. 225.)

PAGE 23, line 19 from bottom, add:

But see *Re Cobre Copper Mining Company*, *Kelk's and Pahlen's cases* (Law Rep. 9 Eq. 107).

PAGE 23, line 10 from bottom, add:

In a recent case (*Sweny* v. *Smith*, Law Rep. 7 Eq. 324), it was held that a shareholder may file a bill on behalf of himself, and all the other shareholders of the Company, to annul the forfeiture of his shares.

PAGE 23, line 3 from bottom, add:

As to clauses in articles relating to forfeiture of shares, see *Re Accidental and Marine Insurance Corporation*, *Bridger's and Neill's cases* (Law Rep. 4 Ch. App. 266), and *Re Blakely Ordnance Company*, *Creyke's case* (Law Rep. 5 Ch. App. 63).

PAGE 24, line 21, add:

With regard to the rights of a Company in a winding-up, against the former holders of forfeited shares, see the notes under sect. 38, *infra*, and *Re Blakely Ordnance Company*, *Creyke's case* (Law Rep. 5 Ch. App. 63; 38 L. J. Ch. 677).

PAGE 27, line 14, add:

Where a tender of payment of calls was made under protest, and with a condition annexed which imposed no obligation or liability on the directors, the tender was held to be good, and therefore a forfeiture of shares as for non-payment of the calls invalid: (*Sweny* v. *Smith*, Law Rep. 7 Eq. 324.)

PAGE 27, line 1 from bottom, add:

See, also, *Re Agriculturist Cattle Insurance Company*, *Dixon's case* (Law Rep. 5 Ch. App. 79).

PAGE 28, line 4, add new paragraph:

Where directors have power to accept the forfeiture or surrender of shares, they may accept the surrender of the shares of a subscriber of the Memorandum of Association, whose name has not been registered pursuant to sect. 23 of this act: (*Re Natal Investment Company*, *Snell's case*, Law Rep. 5 Ch. App. 22.)

PAGE 34, line 13, add:

As to what would be considered a payment of dividends or interest out of capital, see *Re Mercantile Trading Company*, *Stringer's case* (Law Rep. 4 Ch. App. 475).

PAGE 34, line 17, after "3 Ch. App. 105," add:

See, also, *Re Asiatic Banking Corporation*, *Royal Bank of India's case* (Law Rep. 4 Ch. App. 252).

PAGE 36, line 19, add:

Where a Company enters into a contract for the purchase of goods within the scope of its business, it is bound by such contract, although it is not under seal, and although the goods are not intended to be used for the purposes of the Company, and this fact is known to the person with whom the contract is entered into: (*Re Contract Corporation*, *Ex parte Ebbw Vale Company*, Law Rep. 8 Eq. 14.)

PAGE 37, line 12, add:

But if the general powers of the directors, as shown by the regulations, are restricted in any way not apparent on the face of the regulations,

third parties dealing with the Company will not be held bound by such restrictions unless they are proved to have known of them. See the judgments in *Re Asiatic Banking Corporation, Royal Bank of India's case*, (Law Rep. 4 Ch. App. 252).

PAGE 40, line 11 from bottom, add:

See, also, *Atwool* v. *Merryweather* (Law Rep. 5 Eq. 464, n.), and *Gray* v. *Lewis* (Law Rep. 8 Eq. 526), in the latter of which cases it was held that even after an order to wind-up, a shareholder might maintain a suit on behalf of himself and other shareholders, for acts of directors *ultra vires* and in breach of trust, although in such a case the official liquidator is the more proper plaintiff.

PAGE 41, line 14 from bottom, add:

In a recent case it was held that, where payments are improperly made out of the funds of a Company, the directors who make the payments (whether by cheque or otherwise) are liable severally and jointly to repay the amount; and a like liability attaches to all directors sanctioning such payment (*e.g.* by their presence at a meeting), although they are ignorant of the purpose for which the money is required. It is no excuse that if the directors had refused to sanction such payment, or had protested against it when made, it might have injured or broken up the Company: (*Re Land Credit Company of Ireland* v. *Lord Fermoy*, Law Rep. 8 Eq. 7.)

PAGE 41, line 3 from bottom, add:

Much light is thrown upon the position of directors as trustees, by the recent case of *The Joint Stock Discount Company* v. *Brown* (Law Rep. 8 Eq. 381). The Company was established for carrying on the business of a bill broker and scrivener, and (amongst other things) for making advances and procuring loans on and the investing in securities, and the directors were empowered by the articles to carry on the business of the Company, and to exercise all such powers as were not by this act or by the articles, required to be exercised in general meeting. Some time after the incorporation of their Company, the directors entered into an arrangement to assist in the construction of another Company out of an existing banking business, and resolved at a board meeting to apply for a certain number of its shares. In pursuance of the arrangement, the directors took, amongst some of themselves, and in the names of their secretary and assistant manager, on behalf of the Company, 3000 shares in the new Company, for which the sum of 30,000*l.*, drawn by three cheques, was paid out of the Company's funds. They also took, in the names of their secretary and assistant manager, 500 paid-up shares in the new Company, as the consideration for an agreement not to sell any of the new Company's shares under a 2*l.* per share premium, before a certain period. It was held that the directors had no power to take or accept the 3000 shares or the 500 shares; and that the payment of the 30,000*l.* was a breach of trust, which the directors were jointly and severally liable to make good to the Company. One of the directors, A., was present at the meeting which passed the resolution to apply for the shares, and was also present at another meeting where the minutes of the resolution were confirmed, but was absent from home when the first cheque in part payment of the 30,000*l.* was drawn. Upon his return, he wrote two letters, one to his co-directors, and another to a solicitor director, protesting against the scheme. No protest was entered

on the minutes, but at a subsequent board meeting his letter to the directors was read. He attended several subsequent meetings, and took no further steps. He was not one of the allottees of the 3000 shares, nor did he sign any of the cheques. He was held equally liable with the other directors; with reference to him Vice-Chancellor James, after referring to his part in passing the resolution and the futility of his protest, observed, "Then it is said, what was he to do? Was he to have filed a bill to prevent the directors carrying out what they thought was authorised by the first resolution? All I can say is this, if he could have done it in no other way it was his duty as a director, knowing what was going on, not to have remained quiescent, or acquiescent, which is much the same thing, in what his brother directors were doing, but to have filed a bill, supposing that a bill was necessary."

Another director, not a party to the original resolution, nor an allottee of the 3000 shares, was held equally liable with the others, on the ground of his having signed one of the cheques, the Vice-Chancellor observing, "He says he signed that cheque as a matter of form. It has been repeated with reference to him, and some other of the defendants here, that signing cheques in that way is a mere ministerial act. I am startled at hearing any such statement. A Company, for its own protection against the misapplication of its funds, requires that cheques should be signed by certain persons. Of course it is quite clear that no Company of this kind could be carried on, if every director were obliged to sign every cheque; and it is therefore required that the cheques should be signed by a certain number of persons, for the safety of the Company. That implies, of course, that every one of those persons takes care to inform himself, or, if he does not take care to inform himself, is willing to take the risk of not doing so, of the purpose for which, and the authority under which, the cheque is signed."

See, also, *Gray* v. *Lewis* (Law Rep. 8 Eq. 526) as to the liability of directors for acts done *ultra vires*, and in breach of trust.

It appears, however, that so long as directors act in good faith and without fraud, within their powers as defined by the Memorandum and Articles of Association, they will not be held liable in equity for breach of trust, however imprudent they may have been, and whatever disasters they may have brought upon their Company: (*Overend, Gurney, and Company* v. *Gurney*, Law Rep. 4 Ch. App. 701.)

PAGE 41, line 7, add:

The decree of the Master of the Rolls in this case, being appealed against, was reversed (S. C. Law Rep. 4 Ch. App. 376), the Court of Chancery Appeal holding, that the whole body of shareholders could not maintain a suit in equity, to recover the money they had lost by the misconduct of the directors, whatever remedy each individual shareholder might have against them, by an action at law for misrepresentation.

PAGE 41, line 21, add:

In the case of the *Madrid Bank* v. *Pelly* (Law Rep. 7 Eq. 442) the directors were ordered in a winding-up, to repay to their Company, money which they had received from the promoters immediately after they had paid to the latter a large sum of promotion money.

PAGE 44, line 27, after "(26 Beav. 435)" add .

See, also, *London, Hamburg, and Continental Bank* v. *Henry* (Law Rep. 7 Eq. 334).

PAGE 55, line 6, add:

In another case (*Re European Central Railway Company, Parsons' case*, Law Rep. 8 Eq. 656), where the facts were similar to those in the last, but where the Company having learned that the transferee was an infant, allowed his name to remain on the register, and neither took steps against the transferor, nor informed him of the transferee's infancy until a winding-up took place, it was held that the Company had disentitled itself to have the transferor's name placed on the list of contributories.

PAGE 55, line 1 from bottom, after p. 247, add:

And *Re Commercial Bank Corporation of India and the East, Wilson's case* (Law Rep. 8 Eq. 240).

PAGE 60, line 13, from bottom, add:

In the recent case of *Gray* v. *Lewis* (Law Rep. 8 Eq. 532), the rules of the Stock Exchange, with regard to fixing a settling-day for a new Company, were stated as follows: "The application for a special settling-day for transactions in the shares of a new Company must be accompanied by the following documents, viz., the prospectus, the acts of Parliament, or Articles of Association, the original applications for shares, that two-thirds of the shares (exclusive of those reserved or granted in lieu of money payments, to concessionaires, owners of property, or others) have been applied for, and the allotment-book signed by the chairman and secretary of the Company; a certificate, signed in like manner, stating the number of shares applied for and allotted unconditionally, and the amount of deposits paid thereon; a certificate from the bankers of the Company (accompanied by the pass-book) stating the amounts of the deposits received; and, upon this being done, the committee will appoint a special settling day, provided that no allegation of fraud be substantiated, and that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery, and no impediment exists to the settlement of the account; that the Company is of a *bonâ fide* character, and of sufficient magnitude; that two-thirds of the shares shall be unconditionally allotted; that the Articles of Association restrain the directors from employing the funds of the Company in the purchase of its own shares; and, provided that a member of the Stock Exchange is authorised by the Company to give full information, as to the formation of the undertaking, the applications for and allotments of shares, and as to every other particular that the committee may require."

PAGE 62, line 23 from bottom, add new paragraph:

It has been held (although the court was divided), that on the acceptance by the seller of the nomination by the jobber of the ultimate purchaser (according to the custom of the Stock Exchange), where he has contracted to purchase, a contract is created between the seller and the ultimate purchaser, for the breach of which an action at law may be maintained: (*Davis* v. *Hancock*, Law Rep. 4 Ex. 373.)

PAGE 71, line 17, add:

The judgment in this case was affirmed on appeal (*Cruse* v. *Paine*, Law Rep. 4 Ch. App. 441), with a slight variation in the decree.

PAGE 72, line 19 from bottom, add:

Confirmed on appeal (S. C. Law Rep. 4 Ch. App. 200).

PAGE 75, line 5, add:

As to a Company refusing to register a transfer of shares, because money was due on the shares for calls, notwithstanding a tender of payment by overdue coupons or interest warrants, payable in respect of debentures which the Company had issued, see *Re European Central Railway Company, Holden's case* (Law Rep. 8 Eq. 444).

But where a transfer of shares, by a holder who had not paid his calls, was duly passed by the board through mistake, and remained on the list for some time, but was afterwards cancelled without the authority of the board, the transfer was held to be invalid, and the transferor was made a contributory: (*Re Bank of Hindustan, China, and Japan, Anderson's case*, Law Rep. 8 Eq. 509.)

PAGE 77, line 25 from bottom, add new paragraph:

A Company is not bound to send notice to the transferor of their refusal to register a transfer, and it was held that a transferor who had executed a transfer of his shares, which was sent to the Company's secretary for registration, but never registered, and had taken no further step, and heard nothing more about it, remained liable for his shares: (*Re European Central Railway Company, Gustard's case*, Law Rep. 8 Eq. 438.) But see *Re Hercules Insurance Company, Lowe's case* (W. N. 1870, p. 31).

PAGE 78, line 22, add:

See, also, *Re Natal Investment Company, Snell's case* (Law Rep. 5 Ch. App. 22).

PAGE 79, after line 11, add new paragraph:

It has been decided in *Re China Steamship and Labuan Coal Company, Drummond's case* (Law Rep. 4 Ch. App. 772), that a subscriber to the memorandum satisfies his contract by taking paid-up shares if he takes them directly from the Company (in *Migotti's case* they were not so taken), and gives the Company money's worth for them. See, also, *Re Heyford Company, Pell's case* (Law Rep. 5 Ch. App. 11), which was to a similar effect.

Under the act the Articles of Association cannot exonerate a subscriber to the memorandum from paying money or money's worth for the shares for which he has subscribed: (*Re Raglan Hall Collieries Company*, W. N. 1870, p. 15.)

PAGE 80, line 8 from bottom, add:

Law Rep. 4 Ch. App. 322.

PAGE 81, line 14 from bottom, add:

In another case (*Re Peruvian Railways Company, Robinson's case*, Law Rep. 4 Ch. App. 322), R. applied for shares in Company A. at the instigation of the managing director of Company B., who gave him a letter on behalf of Company B. indemnifying him against all responsibility. R. sent in his application from his own address, and paid the deposit by a cheque on his own banker, although the money was supplied by Company B. The shares were alloted to R., and his name was registered. No notice of allotment was sent to him; but the notice was sent to the office of Company B. On the winding-up of Company A. it was held that R. had not contracted to take the shares, and his name was removed from the list of contributories.

But in a case (*Ib. Crawley's case*, Law Rep. 4 Ch. App. 322)

where the circumstances were precisely similar to those in the last case, the allottee was held to have made himself liable, by executing a blank transfer of those shares which had been allotted to him (done to enable Company B. to deal with them), inasmuch as the execution of such transfer operated as an acceptance of the shares. See, also, *Wallis's case* (Law Rep. 4 Ch. App. 325).

PAGE 82, line 7 from bottom, add:

This case is on the verge of the line beyond which the court will not go, as will appear from the following case: P. applied for shares according to a form of application, which bound him to pay in addition to the 1*l.* per share which he had paid on application, 4*l.* per share on allotment. On the 6th of September he received a letter stating that the directors had allotted him eighty shares, "on which 5*l.* per share must be paid on or before the 15th inst." On the 10th of September, before anything further had been done, P. wrote to the Company refusing to accept the shares. It was held (distinguishing *Pentelow's case*) that the application and the letter constituted a complete contract, and that the repudiation of the 10th of September was ineffectual: (*Re Aberaman Ironworks, Peek's case*, Law Rep. 4 Ch. App. 532.)

PAGE 87, line 21, add:

And *Re General Provident Assurance Company, Bridger's case* (Law Rep. 9 Eq. 74).

PAGE 99, line 15 from bottom, add:

Where, however, certain shareholders of a Company repudiated their shares and refused to pay the calls, on the ground of fraudulent misrepresentation in the prospectus, and one of their number, acting in conjunction with the others, filed a bill to be relieved from his shares, and it was agreed between the solicitors of the Company and these other shareholders that they should not be prejudiced by their not taking proceedings pending the suit, it was held that a decree having been made in favour of the plaintiff in the suit, and affirmed on appeal, a winding-up of the Company, while the appeal was pending and while the names of the others remained on the register of shareholders, did not render them liable as contributories: (*Re Estates Investment Company, Pawle's case*, Law Rep. 4 Ch. App. 497.)

But a suit, whether carried to its termination or compromised, will not affect one who is not a party to it, as appears from the following case. H., a shareholder in Company C., applied for shares in Company A., on the footing of an amalgamation between the two Companies. They were allotted, and his name placed on the register of Company A. Shortly afterwards H. and certain other shareholders repudiated their shares in Company A.

The repudiating shareholders acted by the same solicitor, and one of them, F., soon afterwards filed a bill to set aside the amalgamation, and presented a petition to wind-up Company C. The suit was compromised, on the terms that the amalgamation should be rescinded, and the names of the repudiating shareholders should be removed from the register of Company A. These terms were agreed to by both Companies, and sanctioned by the judge, but the name of H. still remained on the register of Company A., and that Company was soon afterwards wound-up. The agreement for compromise was signed by the solicitor acting for the repudiating shareholders, who was also the solicitor in F.'s suit, but

there was no proof that H. had ever authorised him to agree to the compromise on his behalf, or to do any act in the matter, except to write a letter repudiating the shares. It was held that H. was liable as a contributory in the winding-up of Company A.: (*Re London and County General Agency Association, Hare's case*, Law Rep. 4 Ch. App. 503.) See, also, *Re Estates Investment Company, Ashley's case* W. N. 1870, p. 29.

PAGE 100, line 9, instead of "as well as" put "as also."

PAGE 108, line 22 from bottom, add:

And the same view was adopted in the case of *Re Heaton Steel and Iron Company, Simpson's case* (Law Rep. 9 Eq. 91).

PAGE 109, line 13, add:

The Court has jurisdiction under this section, to rectify the register by restoring the name of a person who has transferred his shares to an irresponsible transferee in order to avoid liability, and may, after the commencement of a winding-up, order the transferor to pay all costs: (*Re Bank of Hindustan, China, and Japan, Ex parte Kintrea*, Law Rep. 5 Ch. App. 95.)

PAGE 113, line 22, after "p. 137" add:

Law Rep. 4 Ch. App. 769, and *Re Joint-Stock Discount Company, Fyfe's case* (Law Rep. 4 Ch. App. 768).

PAGE 118, line 24, add:

The holders of forfeited shares in a limited Company are liable to contribute in a winding-up, as past members, although the articles do not expressly reserve the rights of the Company against them: (*Re Blakely Ordnance Company, Creyke's case*, 38 L. J. Ch. 677; Law Rep. 5 Ch. App. 63.)

PAGE 126, line 21 from bottom, add:

This principle was acted on in a recent case (*Re Land Credit Company of Ireland, Ex parte Overend, Gurney, and Company*, Law Rep. 4 Ch. App. 460), the directors of the Company (which had the power to accept bills) passed a resolution, authorising the chairman to accept bills drawn on the Company by L., upon L.'s depositing securities to a certain amount. The chairman accordingly accepted the bills, and L. deposited some securities, but not nearly to the specified amount. The directors affirmed the transaction by resolution, but it did not appear that they knew that the requisite amount of securities had not been deposited. The bills were entered in the books of the Company, and treated as binding on them. On the winding-up of the Company the validity of the transaction was contested, but it was held (following *The Royal British Bank* v. *Turquand*, 6 E. & B. 327), that the bills were binding on the Company, as they had been accepted *modo et formâ* by the authority of the board of directors, and the provision as to the deposit of securities was a collateral matter, into the observance of which a holder of the bills was not bound to inquire.

PAGE 127, line 4 from bottom, add:

See, also, *Re General Rolling Stock Company, Ex parte Alliance Bank* (Law Rep. 4 Ch. App. 423), as to the right of billholders to have their claims, in a winding-up, satisfied out of securities deposited as collateral

security for a loan which was primarily secured by the bills; and *Re New Zealand Banking Corporation, Levi and Company's case*, Law Rep. 7 Eq. 449, on the same subject.

PAGE 129, line 5, add:

As to the mode in which authority to accept bills on behalf of a Company may be given, see the judgments in *Re Land Credit Company of Ireland, Ex parte Overend, Gurney, and Company*, Law Rep. 4 Ch. App. 460.

PAGE 145, line 9, add:

See *Re London and Colonial Company, Ex parte Clark* (Law Rep. 7 Eq. 550), as to the power of a Company to make an agreement with a shareholder appointed its agent, that the money payable by him for calls, should be debited to him in the agency account.

PAGE 149, line 7, add:

It has been held to follow, from the above enactment, that after a Company has commenced to be wound-up, a shareholder can only assign a debt due to him by the Company, subject to a right of set-off by the Company of all calls which may be made previously to the payment of the debt, and therefore where an assignment was made of debentures of a Company after it commenced winding-up, and calls subsequently made on the assignor, to an amount exceeding what was due on the debentures, remained unpaid, the assignee was not allowed to prove against the Company on the debentures: (*Re China Steamship Company, Ex parte Mackenzie*, Law Rep. 7 Eq. 240.)

PAGE 149, line 8, add:

And *Re Overend, Gurney, and Company, Grissell's case* (Law Rep. 1 Ch. App. 528; 35 L. J. Ch. 752).

PAGE 149, line 22, add:

See, also, the case of *The Financial Corporation Limited* v. *Lawrence* (Law Rep. 4 C. P. 731), where a call made upon a shareholder after he had executed an inspectorship deed, was held recoverable by action after the winding-up commenced, notwithstanding the deed.

PAGE 153, line 11 from bottom, add:

Where a Company is able to meet its liabilities, it is not to be considered insolvent, although it has sustained, and is continuing to sustain, heavy losses, and the court will not make an order to wind it up merely on this ground: (*Re Joint-Stock Coal Company*, Law Rep. 8 Eq. 146.)

PAGE 153, line 7 from bottom, add:

The court will not under this clause order a Company to be wound-up by reason of liabilities not immediately payable, unless it is reasonably certain that the existing and probable assets will be insufficient to meet the existing liabilities, and will not in any case take into account the possible liabilities or profits which may accrue in respect of futu business: (*Re European Life Assurance Society*, Law Rep. 9 Eq. 122.)

PAGE 155, line 28, add:

And *Re Joint-Stock Coal Company* (Law Rep. 8 Eq. 146).

PAGE 156, line 21, add:

See, also, *Re European Life Assurance Society* (Law Rep. 9 Eq. 122.)

PAGE 159, line 9, add new paragraph:

Where a petition for winding-up a Company, containing charges of fraud against the directors, was published at full in a newspaper before the hearing, it was held that the publishers had committed a contempt of court, and they were ordered to pay the costs of a motion to commit: (*Re Cheltenham and Swansea Railway Carriage and Waggon Company*, Law Rep. 8 Eq. 580.)

PAGE 159, line 12, add new paragraph:

Where a creditor appeared on the hearing of a shareholder's petition, the court refused to make an order on his application, although there was evidence that the Company was insolvent, but left him to present a petition of his own if he chose: (*Re Spence's Patent, &c., Company*, Law Rep. 9 Eq. 9.)

PAGE 165, line 3, add:

As to the court under certain circumstances permitting persons who are neither creditors nor contributories to appear in opposition to a petition, see *Re Bradford Navigation Company* (Law Rep. 9 Eq. 80).

PAGE 167, line 29, add new paragraph:

The two preceding cases were considered in *Re Anglo-Egyptian Navigation Company* (Law Rep. 8 Eq. 660), where, on the dismissal of a petition, Vice-Chancellor James gave opposing shareholders one set of costs, in addition to those of the Company, holding that although the general rule of the court in such a case is, that shareholders not served who appear and oppose shall have one set of costs, and creditors not served who appear and oppose, another set of costs, yet the rule is not inflexible, and the court will in each case be guided by the particular circumstances.

PAGE 170, line 10, after "267" add:

Law Rep. 7 Eq. 76.

PAGE 172, line 25 from bottom, add:

See, however, *Re London Marine Insurance Association* (Law Rep. 8 Eq. 176).

PAGE 173, line 10, add new paragraph:

An order for continuing a voluntary winding-up under supervision, made upon a creditor's petition for a compulsory winding-up, was discharged, and the petition reheard without fresh advertisement, on service and consent of all parties entitled to be served: (*Re Patent Floor-Cloth Company*, Law Rep. 8 Eq. 664.)

PAGE 175, line 20, add:

A claimant against a Company in course of liquidation, brought an action by leave of the court against the Company, in respect of his claim, which was defended on behalf of the Company by the official liquidator, also by leave of the court. The claimant having obtained a judgment which carried costs, the court held that the claimant was entitled to have his costs of the action, and also his costs of the application for leave to bring the action, paid in full out of the assets of the Company, as well as his costs of the application to the court for an order establishing his right to such payment; all his other costs to be added to his debt: (*Re Trent and Humber Shipbuilding Company, Bailey and Leetham's case*, Law Rep. 8 Eq. 94.)

PAGE 175, after line 1 from bottom, add new paragraph:

Where the shareholders of a Company, in course of voluntary winding-up under supervision, resolved in general meeting that the further progress of the liquidation should be put an end to, with a view to the continuance of the Company and resumption of its business, and a petition praying for an order accordingly was presented, stating that all debts had been paid, and that there was money in the hands of the liquidators sufficient to meet arrears of current expenses, the court made an order as prayed, and directed that an opposing shareholder should have the option of retiring from the Company, the value of his interest in the Company, if he elected to do so, to be paid to him by the petitioner: (*Re South Barrule Slate Quarry Company*, Law Rep. 8 Eq. 688.)

PAGE 177, line 11 from bottom, add:

Law Rep. 8 Eq. 146.

PAGE 178, line 3 from bottom, add:

See, also, *Re Northern Assam Tea Company* (W. N. 1870, p. 12).

PAGE 181, line 5 from bottom, add:

If a Company in course of liquidation be ordered to pay costs, such costs are payable in full out of the assets of the Company, and are not to be proved as a debt in the winding-up: (*Madrid Bank* v. *Pelly*, Law Rep. 7 Eq. 442.)

PAGE 182, line 28, add:

With regard to the costs in such cases, see *Re Bank of Hindustan, China, and Japan, Ex parte Smith* (Law Rep. 3 Ch. App. 125), and *Re Trent and Humber Shipbuilding Company, Bailey and Leetham's case* (Law Rep. 8 Eq. 94.)

PAGE 185, line 17 from bottom, add:

If a solicitor, employed by an official liquidator in a winding-up, be discharged, he has no lien for his costs on the file of proceedings in the winding-up, and must deliver up all such documents to the official liquidator: (*Re Union Cement and Brick Company, Ex parte Pulbrook*, Law Rep. 4 Ch. App. 627.)

PAGE 187, line 2, add:

Where a summons is adjourned into court the "costs of the application" directed to be paid by the party against whom the court decides, are simply the costs of the adjournment into court: (*Re European Central Railway Company, Holden's case*, Law Rep. 8 Eq. 444.)

PAGE 187, line 18 from bottom, add:

Where a person's name has been wrongfully placed on the list of contributories, his right to have it removed is not affected by the fact that no person is in existence, whose name can be substituted for his: (*Re Joint Stock Discount Company, Fyfe's case*, 38 L. J. Ch. 725; Law Rep. 4 Ch. App. 768.)

PAGE 188, line 2 from bottom, add:

And *Re European Central Railway Company, Parsons' case* (Law Rep. 8 Eq. 656), where the court refused to place the transferor on the list of contributories, on the ground that the Company had been guilty of laches.

PAGE 189, line 22, add:

Where a transfer of shares was made to an infant, before the passing of a resolution to wind-up voluntarily, and the infant had not attained majority until after the resolution, the transfer was held (at the instance of the liquidator) to be avoided under sect. 131 of this act, although the infant after attaining twenty-one wished to retain the shares: (*Re Continental Bank Corporation, Castello's case*, Law Rep. 8 Eq. 504.)

PAGE 189, line 22 from bottom, add:

In the case of *Re Commercial Bank of India and the East, Wilson's case* (Law Rep. 8 Eq. 240), it was held that one who was an infant at the commencement of the winding-up of a company, in which he was registered as a shareholder, was not bound by the fact that solicitors had appeared on his behalf at chambers on the question of a call, the Master of the Rolls saying that this did not amount to confirmation or acquiescence, and that some distinct act must be shown, to create a liability in such a case. But see *Re Norwegian Charcoal Iron Company, Mitchell's case* (W. N. 1870, p. 3).

PAGE 191, line 4, add:

See, also, *Re European Central Railway Company, Gustard's case* (Law Rep. 8 Eq. 438), as to the consolidation of shares into shares of greater nominal value.

PAGE 193, line 11 from bottom, add:

See, also, *Re Merchants' Company, Heritage's case* (Law Rep. 9 Eq. 5). An application for the rectification of the register on behalf of a Company in liquidation, must be in the name of the Company, and not in the name of the liquidator: (*Re Bank of Hindustan, China, and Japan, Kintrea's case*, Law Rep. 5 Ch. App. 95.) See the same case with regard to the power of the court in the matter of costs.

PAGE 195, line 11 from bottom, add:

From *Re Joint-Stock Discount Company, Fyfe's case* (Law Rep. 4 Ch. App. 768), it appears that a transferor's right to have his name removed from the list of contributories, is not affected by the fact that no person is in existence whose name can be substituted for his.

PAGE 195, line 9 from bottom, add:

See, however, *Re Merchants' Company, Heritage's case* (Law Rep. 9 Eq. 5), also before the Master of the Rolls, where a transferor was held a contributory, although the transfer had been registered and the transferee's name placed on the list of shareholders, but the transferee had never executed the transfer, and obtained an order of the court removing his name from the register. This case was distinguished from the last by the Master of the Rolls.

PAGE 196, line 12, add:

On the subject of transfers generally, see p. 55, *et seq.*

PAGE 196, line 13 from bottom:

Instead of "866" put "1866."

PAGE 199, line 23, add:

As to the power of the court, under this section, to order repayment of a dividend improperly paid to a shareholder, see *Re Mercantile Trading Company, Stringer's case* (Law Rep. 4 Ch. App. 475).

PAGE 200, line 5, add:

See, also, the remarks on *Grissell's case* in *Re China Steamship Company, Ex parte Mackenzie* (Law Rep. 7 Eq. 240).

PAGE 200, line 8, add:

Where a Company has become indebted to a shareholder, after the commencement of a winding-up, the liquidator is not entitled to enforce against him the payment of a call made in the winding-up, without bringing the debt into account: (*Re London and Colonial Company, Ex parte Clarke*, Law Rep. 7 Eq. 550.)

PAGE 207, line 16, add:

The practice with regard to the appointment of a special examiner, was described by the Master of the Rolls in a recent case, as follows: "An application is made for a special examiner, upon evidence that the regular examiner cannot take the case within a reasonable time; that is the necessary preliminary. Then the parties ask the Court to appoint a special examiner; and if they can agree on a person to be appointed, the court appoints that person as special examiner; if they cannot agree, then the court selects the special examiner, but when it does so it gives the name to the parties, and allows them to be heard upon the subject." Thus, all persons interested in the appointment have a right to be heard on it, and it was held that an alleged contributory could not be required to attend and be examined before a special examiner appointed in a winding-up, to whose appointment he had not consented: (*Re Smith, Knight, and Company*, Law Rep. 8 Eq. 23.)

PAGE 208, line 3 from bottom, add:

Shares in a Company had been transferred from C. to N., without consideration, G. being the active party in the transaction, and the subsequent calls had been paid with moneys supplied by G. On a winding-up, the liquidators wishing to trace these moneys, applied for a summons calling upon the secretary of a bank, with which G. kept his account, to attend for examination, and produce all books containing entries as to G.'s affairs. It was held that the summons might issue, it being left open to the witness, on attending the summons, to take objections to the inspection of the books: (*Re Smith, Knight, and Company*, Law Rep. 4 Ch. App. 421.)

PAGE 212, line 19, add:

With regard to the enforcement against contributories resident in England, of an order for a call made by the Court of Bankruptcy in Ireland, see *Re Hollyford Copper Mining Company* (Law Rep. 5 Ch. App. 93).

PAGE 213, line 21, add:

No appeal will be allowed from an order made in chambers, unless the judge certifies that the case has been so fully argued before him in chambers that he does not require it to be re-argued in court: (*Re Humber Ironworks, and Shipbuilding Company, Ex parte Warrant Finance Company, No.* 2, Law Rep. 5 Ch. App. 89.)

PAGE 213, line 5 from bottom, add:

Where, on an appeal, the official liquidator supports unsuccessfully

the decision of the court below, his costs of the appeal will be allowed out of the estate; where he appeals against the decision of the court below and is unsuccessful, and is ordered to pay costs, it will be left to the court below to determine whether they shall come out of the estate: (*Re Peruvian Railways Company, Robinson's case*, Law Rep. 4 Ch. App. 322.)

PAGE 214, line 6, add:

As to the jurisdiction of the court to discharge an order made in a winding-up, although more than three weeks have elapsed since the order was made, see *Re Estates Investment Company, Ex parte Turnley and Oliver* (Law Rep. 8 Eq. 227).

PAGE 219, line 26, add:

As to the effect of this section in avoiding a transfer made to an infant before the resolution to wind-up, see *Re Continental Bank Corporation, Castello's case* (Law Rep. 8 Eq. 504).

PAGE 241, line 5, add:

When a Company has been ordered to be wound-up, the interest upon debts which carry interest, ceases to run from the commencement of the winding-up, unless the estate is sufficient to pay all debts in full, in which case alone subsequent interest can be claimed (*Re Humber Ironworks and Shipbuilding Company, Ex parte Warrant Finance Company*, 38 L. J. Ch. 712; Law Rep. 4 Ch. App. 643); but this rule does not prevent a creditor who has a right to prove for the same debt against the estates of two Companies in liquidation, from receiving dividends from both estates, until the full amount of his debt and interest has been satisfied: (*Re Joint-Stock Discount Company, Warrant Finance Company's case*, Law Rep. 5 Ch. App. 86.) Neither does it prevent a creditor who holds security from receiving dividends to the full amount of the principal, and at the same time realising his security, until the full amount of principal and interest has been satisfied: (*Re Humber Ironworks and Shipbuilding Company, Ex parte Warrant Finance Company, No.* 2, Law Rep. 5 Ch. App. 88.)

PAGE 242, line 5, add:

See, also, *Re London and Colonial Company, Ex parte Clark* (Law Rep. 7 Eq. 550), on the same subject.

PAGE 243, line 17 from bottom, add:

See, however, the case of *Re Barned's Banking Company, Coupland's claim* (Law Rep. 8 Eq. 472), where creditors were only allowed to prove for the balance remaining due to them, after realising a part of the debt.

For observations on *Kellock's case*, see *Re Blakely Ordnance Company, Metropolitan and Provincial Bank's claim* (Law Rep. 8 Eq. 244), where it was held that a creditor who, in addition to a Company's acceptances for the amount of his debt, also holds debentures issued to him by the Company as a collateral security for the same debt, has only a right to prove for the sum that is due to him, and cannot prove for the amount secured by the debentures.

See, also, *Re Barned's Banking Company, Forwood's claim* (Law Rep. 5 Ch. App. 18), and *Re Oxford and Canterbury Hall Company* (Law Rep. 8 Eq. 691).

PAGE 243, line 19, add:

But see *Re Trent and Humber Shipbuilding Company, Bailey and Leetham's case* (Law Rep. 8 Eq. 94), and *Re Bank of Hindustan, China and Japan, Ex parte Smith* (Law Rep. 3 Ch. App. 125).

See, also, *Madrid Bank* v. *Pelly* (Law Rep. 7 Eq. 442), where the costs ordered to be paid by a Company in liquidation were held to be payable in full out of the assets of the Company, and not merely provable as a debt in the winding-up.

PAGE 243, line 8 from bottom, add:

See, also, *Re British and American Steam Navigation Company, Pearse's claim* (Law Rep. 8 Eq. 506), as to proof by billholders in a winding-up.

PAGE 244, line 5, add:

Where a Company becomes incompetent to perform a contract for the purchase of goods, in consequence of its winding-up, the party contracting to supply the goods is entitled to prove in the winding-up for the breach of contract, and is not obliged to accept the official liquidator's acceptances in payment for the goods, although it was originally agreed that the goods should be paid for by acceptances: (*Re Contract Corporation, Ex parte Ebbw Vale Company*, Law Rep. 8 Eq. 14.)

PAGE 244, line 10, add:

The assignee of a debt due from a Company, in course of liquidation, may prove against the Company for the full amount of the debt, although he is a contributory of the Company, and has bought up the debt for a less sum than is actually due on it: (*Re Humber Ironworks Company*, Law Rep. 8 Eq. 122.)

PAGE 244, line 11 from bottom, add:

The decisions in these cases were confirmed by the Court of Appeal: (*Re Trent and Humber Company, Ex parte Cambrian Steam Packet Company*, Law Rep. 4 Ch. App. 112.)

PAGE 246, line 16, add:

The court has jurisdiction under this section to sanction a compromise between the creditors and contributories of a Company in liquidation, and did so where the compromise was assented to by a large majority of both classes, and provided that the creditors should accept a composition: (*Re Commercial Bank Corporation of India and the East*, Law Rep. 8 Eq. 241.)

PAGE 250, line 4, add:

See, also, *De Rosaz* v. *Anglo-Italian Bank Limited* (Law Rep. 4 Q. B. 462) where it was held that a shareholder who had obtained an award, on a reference under this and the following sections, could bring an action upon it.

PAGE 251, line 6 from bottom, add:

See, also, *De Rosaz* v. *Anglo-Italian Bank Limited* (Law Rep. 4 Q. B. 462).

PAGE 255, line 13 from bottom, add:

The limited effect given to the section, in the last two cases (both decided by the Master of the Rolls), was strongly dissented from by the

Court of Chancery Appeal in *Re Mercantile Trading Company, Stringer's case* (Law Rep. 4 Ch. App. 475), in which the court considered that, "wherever upon notice of motion and upon affidavit and due examination of witnesses," a conclusion might properly be arrived at by the court, there was no reason why a bill should be filed, instead of deciding the question under this section.

PAGE 274, line 6, add:

As to the winding-up under this act of a Company formally dissolved before the passing of the act, see *Re Family Endowment Society* (W. N. 1870, p. 2).

PAGE 274, line 10, after "W. N. 1869, p. 108," add:

Law Rep. 8 Eq. 176.

PAGE 274, line 24, after "W. N. 1869, p. 108," add:

Law Rep. 8 Eq. 176.

PAGE 277, line 5, "after p. 108," add:

Law Rep. 8 Eq. 176; Ib. 4 Ch. App. 611.

PAGE 277, line 6, add:

As to the parties liable to pay the costs of the winding-up, in the case of an unregistered company, see *Re London Marine Insurance Association* (Law Rep. 8 Eq. 176).

PAGE 292, note (*c*) add:

As to what constitutes a payment of dividends out of profits, within the meaning of clause 73, see *Re Mercantile Trading Company, Stringer's case* (Law Rep. 4 Ch. App. 475).

PAGE 316, line 12, add note:

A court of equity is bound to give effect to an agreement to refer under this section, and will not entertain a suit in contravention of such agreement: (*Watford and Rickmansworth Railway Company* v. *London and North Western Railway Company*, Law Rep. 8 Eq. 231.)

PAGE 319, line 23, add:

Also, *Re Petroleum Company* (15 L. T. N. S. 169), *Re Thames Mutual Club Insurance Company* (Ib. 263), and *Re London and Westminster Wine Company* (1 Hem. & M. 561; 9 L. T. N. S. 321).

PAGE 326, line 9, after "399, n." add:

On appeal, Law Rep. 4 Ch. App. 112.

PAGE 326, after "Rule 27," add note:

When a claim against a Company in liquidation is adjourned into court, and allowed with costs out of the estate, only the costs of the adjournment into court are meant to be given, and the costs incurred by the claimants in chambers must be added to the amount of the claim. If the court intends that the whole of the costs shall be paid out of the estate (as may be done if it appears that the opposition to the claim is not *bonâ fide*), this must be distinctly stated in the order: (*Re General Estates Company, Ex parte Wright and Gamble*, Law Rep. 8 Eq. 123.)

PAGE 474, line 18, add:

Another act on the subject (32 & 33 Vict. c. 114, *post*) has just been passed, which is to be construed as one with this act as amended by the Railway Companies Act, 1867.

PAGE 499, line 19 from bottom, after "789" put:
Law Rep. 8 Eq. 356.

PAGE 500, after "sect. 6," add note:
For an order made under this section in the case of an Irish railway Company being wound-up by the Court of Chancery in England, see *Re Waterford and Passage Railway Company* (W. N. 1870, p. 32.)

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